SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11400-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PAUL STOTT Respondent

Before:

Mrs J. Martineau (in the chair)
Miss J. P. Devonish
Mrs L. Barnett

Date of Hearing: 25-26 July 2016 & 25-28 October 2016

Appearances

Mr Timothy Dutton CBE QC and Tetyana Nesterchuck, Counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Russell-Cooke LLP, 2 Putney Hill, London SW15 6AB for the Applicant

The Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent made on behalf of the Solicitors Regulation Authority ("the SRA") were as follows:

1.1 The Respondent caused or permitted the Firm to accept monies received from the Axiom Fund totalling £3,150,343.26[1] in the amounts of £668,111.63 (on 9 May 2012), £668,118.00 (on 9 May 2012), £668,113.63 (on 22 May 2012) ("the May monies") and £1,146,000 (on 2 August 2012)[2] ("the August monies") in circumstances where it was improper for the Respondent to do so. The Respondent's conduct was improper for the following reasons (and each of them):

1.1.1 He knew that the firm had not complied with the terms of the Litigation Funding Agreement pursuant to which the monies were purportedly advanced, and which was intended to protect the interests of the investment fund and of the ultimate investors[3] in the investment fund:

1.1.2 He knew that the Litigation Funding Agreement pursuant to which the monies were purportedly advanced did not reflect the purpose for which the firm intended to use and/or in fact did use the monies, and that the intended and actual use of the monies was not properly documented by the Respondent and the Investment Manager.

1.1.3 He had no intention that the firm would repay the monies as required by the Litigation Funding Agreement and/or knew or was reckless as to the fact that payment was very unlikely;

1.1.4 He misused the funds received by failing to apply them only towards "Eligible Legal Expenses", as defined in and required by the Litigation Funding Agreement;

1.1.5 Despite being on notice of the serious risk that the investment fund's investment manager in arranging for the monies to be paid to the firm was acting fraudulently and/or in other serious breach of duty to the investment fund and/or the ultimate investors, he failed to carry out any or any sufficient enquiries reasonably to satisfy himself that the payments (and the assumption of a liability to repay a total of £4,948,1803[4] inclusive of the facilitation fee and insurance premium) did not involve any such conduct by the investment manager;

1.1.6 He unreasonably risked the firm being a party to transactions which were a fraud on the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the investment manager towards them (or one of them); and/or

[1] The Rule 5 Statement figure was £3,150,341.56
[2] The allegations take no account of the firm's liability to pay the Facilitation Fee and insurance premium:
[3] The investors invested via a "feeder fund" assets in the investment fund that made the loans.
[4] Comprises Loan Amount £3,150,341.26 in addition to Facilitation Fees of £1,649,393.34 and Financial Guarantee Insurance of £148,445.40

1.1.7 In all of the circumstances, as the Respondent well knew or suspected, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.

The Respondent thereby acted without integrity, in breach of Principle 2 of the SRA Principles 2011 ("the Principles"), and behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the Principles.

1.2 The Respondent failed to pay the monies identified in allegation 1.1 into the Firm's client account or, if he wrongly but honestly believed that the funds received constituted office money, he failed to pay the said monies into an office account whose sole purpose was to hold the monies pending their use for an authorised purpose contrary to Principles 2, 6, 8 and10 of the Principles and to Rules 1.2(a), 1.2(b) and 14.1 of the SRA Accounts Rules 2011 ("SAR").

1.3 The Respondent misappropriated or caused or permitted the misappropriation of £3,150,341.56 (or thereabouts), being the money received from the investment fund. The Respondent thereby acted without integrity, in breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public placed in him or in the provision of legal services in breach of Principle 6 of the Principles.

1.4 The Respondent on 14 October 2011 transferred £32,000 from client to office account, which was a transfer of unallocated funds. The Respondent thereby misused client money and acted without integrity in breach of Principle 2 of the SRA Principles 2011, and behaved in a way that did not maintain the trust placed in him and in the provision of legal services in breach of Principle 6. By transferring the said sum of £32,000 from client to office account as aforesaid the Respondent also acted in breach of Rule 20 of the SAR.

1.5 The Respondent on 15 November 2011 transferred £40,000 from client account to office account such transfer being of unallocated funds. The Respondent thereby misused client monies and acted without integrity, in breach of Principle 2 of the Principles and behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.
By reason of the matters aforesaid the Respondent also acted in breach of Rule 20 of the SAR.

The Applicant also alleged that the Respondent had acted dishonestly in relation to allegations 1.1 to 1.5 (inclusive). Further or alternatively he had acted recklessly. The allegations did not, however, depend on the Tribunal making a finding of dishonesty or recklessness.

Documents

2. The Tribunal reviewed all of the documents submitted by the Applicant and the Respondents, which included:

- Volume 1 – Application and Rule 5 Statement dated 19 June 2015; Respondent's Answer to the Rule 5 statement dated 2 September 2016; Applicant's Reply to the

Answer dated 30 September 2015; Forensic Investigation Report dated 11 April 2012 ("the 2012 FIR"); Interim Forensic Investigation Report dated 20 February 2013 ("the Interim FIR"); Final Forensic Investigation Report dated 29 November 2013 ("the Final FIR"); Tribunal's Memoranda dated 17 September 2015 and 27 July 2016; Applicant's Skeleton Argument;

- Volumes 2 – 5 - Documents from the Rule 5 Statement Exhibit "PAS1" in chronological order;
- Volume 6 – Documents from the Rule 5 Exhibit "PAS2" and Correspondence;
- Volume 7 – Documents from the adjourned hearing in July 2016, Costs Submissions and Previous Findings;
- Volumes 8 – Documents from the High Court proceedings between the Respondent and Axiom;
- Volumes 9A, 9B and 9C – Statutory Demand Appeal documents
- Authorities Bundle;
- Reports of Dr Ruth Jarman and Dr Ian Cumming dated 16 and 20 October 2016 respectively;
- Respondent's Witness Statement dated 8 January 2016
- Respondent's testimonials and statement of means

Preliminary Matters

Preliminary Matter (1) - Respondent's application to adjourn the hearing made on 25 July 2016

3. On 25 July 2016, Mr Ramsden (who was instructed for the adjournment application only) renewed an application to adjourn the proceedings (an application to adjourn having been received, considered and refused by the Tribunal on 22 July 2016). Mr Ramsden informed the Tribunal that the Respondent had, on 24 July 2016, seen his GP and a friend who was also a consultant psychiatrist. The Respondent was not in attendance at the hearing as he was in Hull, seeking an urgent referral to an independent consultant psychiatrist, whose opinion, it was anticipated, would confirm the Respondent's inability to conduct a hearing without legal representation.

4. The basis of the application to adjourn, which was articulated in the Respondent's witness statement dated 25 July 2013, was the extreme difficulty that he had had over the last few months and, more acutely, in the last week, in arranging legal representation and putting himself in a position to pay for that representation.

5. Mr Dutton submitted that the question for the Tribunal was whether directing that the hearing go ahead, in circumstances where the Respondent would not be legally represented, made the assertion of his defence practically impossible. He had prepared and signed a defence to the Rule 5 statement and had provided a detailed witness statement which referred to the documents upon which he relied. He was therefore, very well placed to defend himself in these serious proceedings.

The Tribunal's Decision

6. The Tribunal listened and considered carefully the submissions made by counsel, and were mindful of the need for fairness in considering the application. The sole ground submitted for the application was the inability of the Respondent to secure legal representation, due to his financial circumstances. The Tribunal noted the history of the proceedings, and in particular, that the Respondent had known for some time the date of the substantive hearing. Further, the Respondent had failed to comply with a number of directions. He had not organised his legal representation, even 7 days before the hearing. The Respondent had had many months to secure legal representation and had, it seemed, failed to do so.

7. In a case of this nature, where skeleton arguments were required to be exchanged seven days before the hearing, the Respondent should have had arrangements in place well in advance of the hearing. He was an experienced litigation solicitor. The Tribunal, having read the papers in this matter, accepted Mr Dutton's submission that the cased turned largely on the Respondent's state of mind and events in which he was closely involved. The Tribunal considered its guidance policy and determined that there would be no injustice if the matter were to proceed in the absence of legal representation for the Respondent. The Respondent was an experienced solicitor, who had provided a comprehensive answer to the allegations contained within the Rule 5 Statement, and a detailed witness statement outlining his position in full. In all of the circumstances, the Tribunal considered that it was appropriate for the matter to proceed, and accordingly the application to adjourn was refused.

Preliminary Matter (2) - Respondent's application to adjourn the hearing made on 26 July 2016

8. During the course of the opening, the Tribunal received a letter from Dr Jarman, a consultant psychiatrist, on behalf of the Respondent. The letter, dated 26 July 2016, stated, amongst other things that the Respondent was not "fit to represent himself in person in relation to quite serious allegations that could have a catastrophic effect upon himself and others." The letter further stated that the Respondent was "currently in an extremely fragile psychological state …"

9. The Respondent initially stated that he wished to continue with the proceedings as "Mr Dutton has now started and he is halfway through his presentation, so I think in the circumstances, then, we should continue. But as long as that is borne in mind."

10. The Tribunal informed the Respondent that it would be making findings of fact based on the evidence, on the issues in question. Whilst the Tribunal would assist the Respondent as much as possible, it would not be taking his medical condition into account when making its determination on the evidence.

11. The Respondent, having given the matter further thought, applied for the matter to be adjourned on the basis of the content of the letter from Dr Jarman. He submitted that he would "find it very difficult to represent myself and also be subjected to any significant cross-examination".

12. Mr Dutton submitted that the medical evidence had arrived during his opening submissions, which meant that the Applicant was not in a position to examine or obtain any independent evidence as to the Respondent's medical condition. The medical evidence indicated that the Respondent had mild depression. As he was not in a position to obtain representation from counsel, the question for the Tribunal, it was submitted was whether the Respondent was in such a state as would render it impossible for him to have a fair hearing, in light of his condition as portrayed by Dr Jarman in her letter. Mr Dutton submitted that the Respondent would, notwithstanding his medical condition, receive a fair hearing if the matter continued. In the circumstances, an adjournment was not justified.

13. Further, there was no reference in the medical evidence to the following features, which it was submitted, would assist him when dealing with his case or giving evidence:

- the pleaded case was clearly set out by him and on his behalf, in the response to the Rule 5 statement;

- he had provided a detailed witness statement which could stand for his evidence-in-chief, supplemented by anything he would wish to say, if or when he went into the witness box to give evidence;

- when it comes to cross-examination of the Forensic Investigation Officer, that cross-examination was something which the Respondent, certainly from what he had already demonstrated, was capable of undertaking. Further, the Tribunal would ensure that any points that needed to be put to Mr Ireland would be put, enabling the Respondent to advance any challenges that he wished to make.

14. Further, the issues in the case related predominantly to the Respondent's state of mind when he drew down and used the monies advanced by the Axiom Fund, and his state of mind when he took two sums of money from client account and placed them into office account, for use in the office account. There was no suggestion that he was suffering from depression at that time and he had been able to place into his witness statement and, indeed, into the detailed letter which was provided on 13 January 2014, and in interview, his account of those matters. He was therefore well placed to deal with them.

15. Taking all of this into account, it was submitted that the Respondent would have a fair hearing and would be able to participate fully (with breaks and appropriate adjustments), so as to do justice to his case. In the circumstances, the application to adjourn was opposed.

<u>The Tribunal's Decision</u>

16. The Tribunal reluctantly determined that it must accede to the Respondent's request for an adjournment on the grounds set out in Dr Jarman's report of 26 July 2016. The Tribunal noted in particular that Dr Jarman concluded that the Respondent was in an extremely fragile psychological state and was struggling to cope on a day-to-day basis. The Tribunal also took into account the Respondent's submission that he would not be able to withstand lengthy cross-examination in his current state; such

cross-examination was inevitably going to be part of the case. Accordingly, the Tribunal granted the Respondent's application to adjourn the substantive hearing, and directed that should the Respondent's medical condition be a relevant factor at the resumed substantive hearing, the Respondent should file and serve a medical report by 4.00pm on 27 September 2016. Thereafter the Applicant, if so advised, had leave to obtain its own medical report.

17. The adjourned substantive hearing was listed for continuance on 25–28 October 2016.

Preliminary Matter (3) - Respondent's Application to Adjourn the hearing made on 25 October 2016 at the resumed Substantive Hearing

18. On 18 October 2016, the Respondent made a written application to adjourn the continued substantive hearing on the basis of his poor health as detailed in a further report of Dr Jarman dated 16 October 2016. The Applicant opposed the application on the basis that it had instructed its own medical expert to prepare a report; an appointment had been arranged for the Respondent to see Dr Cumming on 20 October 2016.

19. The Tribunal refused the application to adjourn. It was noted that the Respondent had failed to comply with the directions issued by the Tribunal on 26 July 2016, in that he had failed to serve any medical evidence upon which he intended to rely by 27 September 2016. The Tribunal gave permission for the application to be renewed at the commencement of the resumed substantive hearing, when it was anticipated that the Applicant's expert report would be available. The Tribunal further directed that the Respondent should be ready to proceed with the matter in the event that the application was refused.

20. On 25 October 2016 at the resumed substantive hearing, the Respondent applied for the matter to be adjourned. He clarified that the application for a validation order had not yet been determined, and was due to be heard in the Bankruptcy Court on 28 October 2016. As a result, the Respondent was not represented, and he would very much like to be represented so as to properly defend the allegations he faced. In relation to the Applicant's submission that the Respondent was an experienced litigator, the Respondent submitted that for the last 10 – 12 years, he had not been dealing with client matters, and certainly had not dealt with any client matters since the Applicant imposed restrictions on the way he practised in January 2015, when he undertook not to undertake client cases. Despite the Applicant trying to give the impression that this was not a complex matter, it had the benefit of leading and junior counsel, which, it was submitted, showed that the Applicant did not think that this was a straightforward matter.

21. The Respondent submitted that representing himself in these proceedings amounted to more than "normal litigation stress", particularly as the allegations if proven would involve his complete financial, professional and personal ruin.

22. The Respondent argued that any submissions by the Applicant in relation to serving the public interest were misplaced; the events to be tried had occurred five years ago. Since that time, his firm had been under scrutiny from the SRA and no other issues had arisen.

23. The Respondent submitted that if the case went ahead, it gave the SRA "its best opportunity to secure an easy win against an unrepresented party, which would only serve to strengthen their position before the Wingate appeal in December this year."

24. In relation to the report of Dr Cumming, the Respondent submitted that Dr Cumming recognised that as he was unrepresented, the way that his depression might affect him could be more of an issue, as the demands on the Respondent would be greater; it was not just a matter of answering questions. The Respondent submitted that it was not simply a matter of preparing the case and undergoing cross-examination, but he would also be required to challenge the SRA case, pointing out any inconsistencies; he did not feel in a position to do so. Whilst Dr Cumming observed that the Respondent was still working which demonstrated that he was still able to function, the Respondent submitted that that was the only thing that was functioning, and to a reduced level.

25. The Respondent submitted that the matter should be adjourned until after the case with Axiom in December, when all the issues would have been dealt with and there would be no need for a validation order.

26. Dr Jarman gave evidence, and confirmed that she broadly agreed with the report of Dr Cumming. Dr Jarman was referred to correspondence between the Respondent and the SRA that had been written since her initial diagnosis of the Respondent in July 2016. Dr Jarman agreed that the correspondence was cogently argued, well written and intelligent, albeit that she considered the correspondence to be very emotive. Further, whilst "long term memory [was not] necessarily affected … if it's an emotive issue … then it's likely to be held on to, as something that one would ruminate about."

27. Dr Jarman explained that depression affected one's cognition and short term memory such that the ability to focus, simulate and process information was affected. Long term memory aspects did not really "colour the picture in terms of presentation." In terms of the Respondent's intellectual capacity, Dr Jarman explained that the Respondent had "an overall awareness of the situation and the consequences. …an awareness and insight."

28. In relation to the Respondent representing himself in the proceedings, Dr Jarman stated that she did have concerns. She agreed with the comments of Dr Cumming that there had to be a cautious approach taken to matters, due to what was at stake. She acknowledged that the Respondent could process information above average level, certainly in terms of written correspondence. However, she expressed "grave concern" as to how he was going to cope with the challenges of this process; it was not simply a matter of answering questions – the Respondent would have to "jump through intellectual hoops." Further, she did not think that the Respondent, cognitively, was in a position to be able to rise to the challenges of what was required, and he was therefore not "on a level playing field at this moment." In terms of his ability to continue working, Dr Jarman explained that work was familiar and normal for him, so he would not be cognitively challenged as much.

29. Mr Dutton submitted that the question for the Tribunal was whether, if the matter proceeded, the Respondent would receive a fair trial. If matters were to proceed, the Tribunal could make allowances for the fact that the Respondent was unrepresented. Mr Dutton submitted that the Respondent would receive a fair trial for the following reasons:

29.1 It was common ground between the Doctors that the Respondent was suffering from moderate depression, and was not described as seriously depressed.

29.2 He was functioning in the circumstances of any Respondent facing serious allegations, reasonably well.

29.3 Since his diagnosis in July 2016, he had been corresponding cogently, with strong intelligent arguments being expressed by him in writing. Mr Dutton submitted that Dr Jarman was not describing the Respondent as impaired as far as this matter was concerned, or as to his ability to recall events of 2012, or his ability to deal with those events, but rather that there was a degree by him of grasping onto the issues in the case with a great deal of focus on those issues and "an almost emotional attachment to events."

29.4 The Respondent had been assisted in this matter by his solicitors. He had provided a detailed witness statement upon which he could rely as well as a written defence. Further, all of the events of these proceedings were matters within his personal knowledge.

29.5 The core issue in the case concerned the Respondent's state of mind. In relation to allegations 1.4 and 1.5, there were no factual elements in dispute save as to the Respondent's state of mind. In relation to the allegations arising out of his acceptance and use of Axiom funding, there was no significant factual dispute between the parties; the critical dispute was again in relation to the Respondent's state of mind.

29.6 There were no reasonable prospects that if the matter were to be further adjourned, matters would improve for the Respondent.

30. Mr Dutton submitted that the Tribunal may conclude, from Dr Jarman's evidence that the regulatory proceedings weighed heavily upon the Respondent. Mr Dutton submitted that the conclusion of the proceedings would provide the Respondent with definition or certainty from a psychological point of view; adjourning the matter with proceedings still weighing over him was not going to improve his psychological situation.

31 Mr Dutton submitted that Dr Jarman, in her July report, stated that if the Respondent took his medication he would be able to represent himself. He had taken himself off his medication. Nevertheless, Mr Dutton submitted that he was still able to represent himself.

32. In the circumstances, it was submitted that the Respondent would receive a fair trial if matters proceeded, and the application to adjourn was opposed.

The Tribunal's Decision

33. The Tribunal considered carefully the parties' submissions, the medical reports and the oral evidence of Dr Jarman. It noted that the Respondent had stopped taking his medication in the absence of medical advice. In her report of 24 July 2016, Dr Jarman stated:

> "[The Respondent] has not been on his anti-depressant medication for an adequate time for it to have an impact on his mood. It is requested that [the Respondent] is given time for his anti-depressant medication to start to become efficacious (a minimum of 4 weeks) in order to allow [him] to adequately represent himself and be afforded a fair hearing."

34. In her report of 16 October 2016, Dr Jarman stated that the Respondent explained that he had taken the medication but did not renew the prescription. He reported "ongoing cognitive issues" which is the reason why he had not taken his anti-depressant medication. This caused Dr Jarman concern as the Respondent's symptoms of anxiety and depression remained of a moderate nature.

35. Dr Jarman explained that in her opinion, the Respondent continued to "experience moderate symptoms of depression and appeared to experience anxiety of a generalised nature and a sense of heightened agitation on a day-to-day basis." She remained on the opinion that "due to the nature and degree of [the Respondent's] mental health issues, his ability to have a fair hearing would be compromised in the absence of representation from Counsel."

36. Dr Cumming, in his report of 20 October 2016 was of the opinion that it was reasonably evident that the Respondent's symptoms were secondary to the difficulties he was experiencing; this was not unusual – many facing similar allegations would be expected to have a similar profile of symptoms. Dr Cumming stated that "furthermore, it is likely that if the allegations went away, then one would expect an improvement. I noted that [the Respondent] has not helped himself by his decision to stop treatment, though in my opinion the most likely route for recovery is once this matter is over with. In this respect one might consider that progressing with the tribunal is in his clinical interests."

37. Dr Cumming further stated:

> "Though I found him depressed, from my review of the document, I felt that [the Respondent] still had a good grasp of the issues before him and answered all questions I put to him without any struggle and in that regard, would be able to answer the questions put to him by the tribunal. I noted also that he continues (though he indicated he has no choice) to work. … If the question were simply one of fitness to plead … then I would have no major concerns and would consider him fit to plead and stand trial. However, as he does not have representation … and will have to represent himself, then how his depression affects him may be more of an issue as the demands on him will be greater and will not just be a matter of answering questions. … [The Respondent] was clear that he is keen to get the matter over with and wants to prove his innocence but now does not feel able at this time. It could also be

> reasonable to consider that his presentation of depression is simply another form of avoidance. In this case I do not feel there is an absolute position of certainty. Considering that he is still working, which indicates a certain level of functioning, on balance, I would tend to consider that he is fit enough for the tribunal but ask that my reservations … are noted."

38. Dr Cumming was uncertain as to whether the Respondent's report of not making any significant preparation for his appearance was as a result of motivation, the workload and his belief that he would be represented, or alternatively avoidance.

39. The Tribunal noted that the medical evidence did not suggest that the Respondent would be unable to recollect the events in question; any issues in terms of memory were related to short term and not long term memory. The Tribunal had read the Respondent's well written, cogent and intelligent representations made to the SRA post his diagnosis in July 2016; those matters concerned events at the time, and the Respondent was able to make detailed representations demonstrating that his ability to recall details at the time of the events was not impaired. Further, the Respondent had provided a comprehensive witness statement which set out his defence to the allegations in full. That statement was prepared at a time when the Respondent had the benefit of expert legal advice.

40. The Tribunal was used to dealing with unrepresented Respondents who faced serious allegations; the absence of legal representation of itself was not liable to make the proceedings unfair. The Tribunal noted that the Respondent had made a well argued, relevant and cogent application for the proceedings to be adjourned. The Tribunal determined that, with reasonable adjustments, the Respondent was capable and able to represent himself in the proceedings, and that, notwithstanding his medical condition, he was able to have a fair trial. Accordingly, the Respondent's application to adjourn the resumed substantive hearing was refused.

Factual Background

41. The Respondent was admitted to the Roll in October 1984. At all material times he was the senior partner in Ingrams Solicitors ("the Firm") and held 100% of the equity in that Firm.

Allegations 1.1 – 1.3

42. These allegations arose from the Respondent's involvement with the Axiom Legal Financing Fund, Segregated Portfolio and Axiom Legal Financing Fund Master, Segregated Portfolio ("the Axiom Fund"). The Axiom Fund was an investment fund established in the Cayman Islands for the purpose of providing litigation funding. The Respondent obtained funding of £3.15m from the Axiom Fund after he had signed a Precedent Litigation Funding Agreement ("LFA") on 27 April 2012.

43. Whilst it was alleged that the Respondent was on notice of the serious risk that the investment fund's investment manager was acting without authority, fraudulently, or committing some other serious breach of duty, towards the investment fund and the ultimate investors, the Applicant did not seek to establish that the investment manager had in fact acted fraudulently or committed other serious wrongdoing, since that did

not need to be established in the proceedings for the purpose of addressing the Respondent's conduct.

The Axiom Funds

44. At all material times:

- JP SPC 1 was a segregated portfolio company incorporated in the Cayman Islands in 2007 and comprising various sub-funds, known as "segregated portfolios";
- Axiom Legal Financing Fund, Segregated Portfolio ("the Axiom Fund") was a segregated portfolio of JP SPC 1;
- JP SPC 4 was another segregated portfolio company incorporated in the Cayman Islands;
- Axiom Legal Financing Funding Master, Segregated Portfolio ("the Axiom Fund Master") was a segregated portfolio of JP SPC 4;
- The Axiom Fund owned shares in, and was the feeder fund for, the Axiom Fund Master; and
- Tangerine Investment Management Ltd ("Tangerine") was the investment manager of the Axiom Fund and of the Axiom Fund Master.

45. The phrase "the Axiom Fund(s)" and "Axiom" where used below refers to both the Axiom Fund and the Axiom Fund Master.

46. By 2012, investors had invested over £100 million in the Axiom Fund.

47. The Axiom Fund was promoted to investors as a feeder fund that invested in the Axiom Fund Master, which would provide funding to law Firms in the UK to finance the conduct of legal cases.

48. The Applicant understood that the basis on which investors invested in the Axiom Fund was set out in an Offering Memorandum ("the OM") dated June 2009, and Supplemental Offering Memoranda ("the SOMs") dated August 2010, January 2012 and July 2012.

49. The terms on which Tangerine acted as investment manager on behalf of the Axiom Fund were understood to have been set out in an investment management agreement dated 25 May 2009 between the Axiom Fund, the Axiom Fund Master and The Synergy Solution Ltd ("Synergy"), the previous investment manager. Tangerine subsequently became a party to the investment management agreement, as investment manager, in place of Synergy.

50. From August 2012 onwards articles appeared on the internet (including, in particular, on a website called "Offshore Alert") accusing Timothy Schools (a solicitor who had established the Axiom Funds), and Tangerine of fraud, and alleging that the Axiom Funds were a fraudulent scheme. On 26 October 2012, the directors of the Axiom

Funds suspended the calculation of net asset values for participating shares and suspended share redemptions, with effect from 30 September 2012.

51. On 12 February 2013, Grant Thornton were appointed as receivers of the Axiom Funds.

52. On 26 February 2013, solicitors acting for the receivers sent a letter to the Firm demanding repayment of the monies that had been provided to it, on the grounds that the monies had not been used in accordance with the terms of the LFA (as defined), which constituted an event of default.

53. On 21 May 2013, the receivers of the Axiom Funds commenced civil proceeding against various people associated with Tangerine and others, seeking damages of over £100m on various grounds including fraud, conspiracy, breach of fiduciary duty and breach of contract. The Axiom Funds remain in receivership.

The Firm's Application To The Axiom Fund Master

54. By 2012, the Firm was in serious financial difficulty. There were "significant cash flow problems" (as stated in the draft report of Baker Tilly ("BT"). The financial difficulties were said by the Respondent to have been caused by a retrospective repayment to the Miners Compensation Scheme of £1.2m and a reduction in bank facilities of £400,000. At the time of the draft BT report in April 2012, the Firm faced being wound up. Bankruptcy petitions against the Respondent, and former partners of the Firm had been raised by HMRC for VAT and PAYE arrears of £159,000, as well as income tax liabilities of £323,000. Additionally, the Firm had significant other liabilities which were, in April 2012, overdue for payment. These liabilities included VAT and PAYE of £666,000, partners' income tax liability of £252,000 and rent arrears of £46,000.

55. In or around February 2012 the Respondent signed the application form for funding from the Axiom Fund Master on behalf of the Firm, and submitted the form to Tangerine. The Respondent had applied for a facility of £1.4m[5].

56. BT prepared a draft financial due diligence report on the Firm dated 3 April 2012, based on information provided by the Firm, so as to enable the Firm's application to be assessed by Check Mate Audits Ltd ("Check Mate") on behalf of the Axiom Fund Master. An early draft of the report was sent to Tangerine on 17 March 2012. The draft report dated 3 April 2012 was sent to Check Mate on 3 April 2012. Prior to the draft report being sent to Check Mate, by letter dated 23 February 2012 to Check Mate, BT stated:

> "Our work and findings shall not in any way constitute a recommendation as to whether a funding facility should be provided by Axiom — that will be the sole responsibility and at the sole discretion of CMA and Axiom."

[5]Baker Tilly's engagement letter dated 23 February 2012 recorded that the firm had applied for funding by February 2012. The application form referred to the balances of the firm's current accounts "as at 31 January 2012".

57. It was apparent from the BT report that the Firm was in very serious financial difficulty, and, in particular, that:

- The Firm had significant cash flow problems which were originally caused by a retrospective repayment of the Miners Compensation Scheme of £1.2m and a reduction in bank facilities of £400,000. There was a large amount of costs said to be due in respect of the Sandon Dock case which remained unpaid.

- The Firm had winding up petitions against it, and further there were bankruptcy petitions against the Respondent and former partners in respect of VAT and PAYE arrears of £159,000 and income tax liabilities of £323,000.

- The Firm had other significant liabilities that were overdue for payment, which included VAT and PAYE of £666,000, partners' income tax liabilities of £252,000 and rent arrears of £46,000.

- Even after receiving funds from a litigation funder when the facilitation fees ("FF") and interest were added to the Axiom Loan, the amount owed to Axiom would total £3.5m, which was a figure well in excess of the value of any security available from the Sandon Dock cases.

- The Firm had demonstrated poor financial management historically.

- The Firm's only security for the Axiom Loan would be the proceeds of the Sandon Dock case. A report from TM Costings had assessed the remaining recoverable amount in respect of the Sandon Dock case as between £1.5m and £2.3m. However, the sum remained unpaid.

- BT's understanding was that whilst the Firm had asked for £1.4m on the application it was now looking to the Axiom Fund Master for £2.1m; the arrangement fees on the loan with interest would make the amount repayable to Axiom increase to £3.5m.

- BT concluded that the Firm was insolvent.

The Litigation Funding Agreement

58. On or about 27 April 2012 the Respondent on behalf of the Firm signed the LFA and sent it to the Axiom Fund. On 9 May 2012 the Axiom Fund sent the Respondent the first monies. On the following day the Respondent received the signed copy of the LFA. The Respondent read and considered the terms of the LFA at about the time he signed it. In his solicitors' letter of 13 January 2014, it was stated that he had read the LFA at the time that he signed it. Additionally, in the same letter, the Respondent stated that prior to receiving any money from Axiom, he was provided with a copy of the Axiom Presentation. The presentation set out protections that were available for investors including that:

- All loans were insured.
- Loans were expected to settle within one year

- Loans were repaid upon the completion of each case.
- Every loan had an insurance policy taken by the fund that covered the loan capital in the event that the law firm went bankrupt.
- Every loan for litigation cases had an insurance policy arranged by the fund but taken out by the law firm that covered the costs of the case if it was lost.
- Loan capital was reclaimed from the losing party of each case.
- Insurance companies scrutinised case details and approved underwriting of the loan.
- A second insurance policy was taken out to cover the cost of the case in the event of a case losing in court.
- Disbursements included:
    - Court issue fee and allocation fee
    - Court hearing fees (where applicable)
    - Underwriters audit report fee
    - Small amount to cover law firm's work in progress
    - Enquiry agent fee
    - Investment Manager fee
    - Fund sale distribution fee.

59. Under the LFA, the Axiom Fund Master agreed to make available a revolving loan facility to the Firm in an aggregate amount of £20m.

60. The LFA contained terms restricting and controlling the use of sums provided. These terms, it was submitted by the Applicant, were evidently to reduce the risk that sums provided by the Axiom Fund Master to the Firm would not be repaid, and to protect the interests of the Axiom Fund and its investors.

The Written Agreement

61. Clause 2 of the LFA - "LOAN AND PURPOSE" - defined the scope. Clause 2.2 stated that:

> "(a) The Panel Firm shall apply the proceeds of each Loan towards payment of the Eligible Legal Expenses in relation to which the Loan was requested.
>
> (b) The Panel Firm may apply the proceeds of a Loan to fund the insurance premium relating to the Financial Guarantee Insurance.
>
> (c) For the avoidance of doubt, no amount borrowed under this Agreement may be used to fund the claims, proceedings, dispute resolution or cases of any other client of the Panel Firm, other than a Claimant in respect of a Claim or the Proceedings relating to that Claim (as detailed in the relevant Utilisation Request)".

Clause 1 of the LFA - "DEFINITIONS AND INTERPRETATION" - defined "Eligible Legal Expenses" as:

> "…the Legal Expenses relating to a Claim which is evidenced by an invoice, in form and substance the same as the form agreed in relation to that Claim prior to the first Utilisation in respect of that Claim;".

"Legal Expenses" were defined as:

> "… any sum payable in respect of Counsel's fees, expert's fees, Court fees, arbitration fees, the Legal Expenses Insurance or referral fees in relation to the Claimant's Claim or its Proceedings. Such expenses may include VAT where applicable, unless the Claimant is registered for VAT in which case the Claimant will be liable to pay the VAT element of such expenses. Such expenses shall not include any costs payable in respect of the Panel Firm's fees or any costs or expenses payable to one or more Opponents or to another party to the Proceedings".

62. Clause 3 of the LFA - "CONDITIONS OF UTILISATION" - provided that:

> "**3.1 Initial conditions precedent**
>
> The Panel Firm may not deliver the first Utilisation Request unless the Investment Manager has received all of the documents and other evidence listed in Part A of Schedule 1 (*Conditions precedent*) in form and substance satisfactory to it. The Investment Manager shall notify the Panel Firm promptly upon being so satisfied.
>
> **3.2 Conditions precedent for each Loan**
>
> The Lender will only be obliged to comply with Clause 4.4 (Lender's participation) if the Investment Manager has received all of the documents and other evidence listed in Part B of Schedule 1 (Conditions precedent) in form and substance satisfactory to it and the Investment Manager has confirmed that it is satisfied that the Legal Expenses in relation to which the relevant Utilisation Request is being submitted are Eligible Legal Expenses. The Investment Manager shall notify the Panel Firm promptly upon being so satisfied.
>
> **3.3 Conditions precedent for first Loan in relation to a Claim**
>
> The Lender will only be obliged to comply with Clause 4.4 (Lender's participation) in relation to the first Utilisation Request in respect of a Claim if the Investment Manager has received all documents and other evidence listed in Part C of Schedule 1 (Conditions precedent) in form and substance satisfactory to it. The Investment Manager will notify the Panel Firm promptly upon being so satisfied and shall confirm that the relevant claim in relation to which the Loan is being requested is a Claim for the purposes of this Agreement or that it is satisfied that the purpose of the Loan as stated by the Panel Firm in its Utilisation Request is Legal Work…."

63. The documents and other evidence listed in Part A of Schedule 1 (see clause 3.1) included:

- various documents concerning the Firm's constitution and its ability to enter into the agreement;
- written confirmation from the insurers to the Axiom Fund Master that the Axiom Fund Master was or would be included as a co-insured under the Financial Guarantee Insurance policy;
- the executed fixed charge granted by the Firm over the collection account into which the Firm was required, pursuant to clause 7.6 (a)(iii), to pay the proceeds of the amounts due under invoices relating to the Eligible Legal Expenses.

64. The documents and other evidence listed in Part B of Schedule 1 (see clause 3.2) were:

- Details of the relevant Legal Expenses and copies of all related invoices.
- Others (i.e. documents and evidence) as relevant at the request of the lender.

65. The documents and other evidence listed in Part C of Schedule 1 (see clause 3.3) included:

- a copy of any conditional fee agreement with the claimant;
- a copy of the Legal Funding Facility Application Form for the claimant;
- a copy of the written advice regarding the claimant's prospects of success in its claim or related proceedings;
- a copy of Legal Expenses Insurance in relation to the claimant and claim.

66. Clause 4 of the LFA - "UTILISATION" - set out the requirements for each Utilisation Request in order for funds to be drawn down. These included provision that the Utilisation Request should specify the Eligible Legal Expenses and Financial Guarantee Insurance Premium (if applicable) in relation to which such Utilisation was requested, and that the Request should attach copies of the relevant invoices or explanation of the expenses.

67. Clause 4.2 provided that:

> "4.2(a) The Utilisation Request is irrevocable and will not be regarded as having been duty completed unless:
>
> (iii) it specifies the Client Account to which the proceeds of the Utilisation are to be credited".

68. Clause 5 of the LFA - "INSURANCE" - provided that "The Panel Firm shall procure the inclusion of the Lender as a co-insured under the Financial Guarantee Insurance policy, by way of a side letter or otherwise." Clause 12 detailed the Firm's undertakings. Clause 12.3 provided that the Firm, "shall maintain (a) the Financial Guarantee Insurance, and (b) other insurances on and in relation to its businesses and assets with reputable underwriters or insurance companies against such risks and to such extent as is usual for law firms."

69. Clause 6 of the LFA – "REPAYMENT" - provided that "The Panel Firm shall repay the Facility in full on the Termination Date". The "Termination Date" was defined in clause 1 as "…the date falling 12 months from the date of this Agreement". The

Applicant submitted that as a result of Clause 6, the Firm was required to repay the Axiom Fund on 27 April 2013.

70. Clause 22 of the LFA – "ENTIRE AGREEMENT" provided that:

> "This Agreement and the other Finance Documents[6] are the entire agreement between the Parties concerning the subject matter of the Finance Documents. Any prior arrangement, agreement, representation or undertaking is superseded and, except as expressly provided, each Party acknowledges that it has not relied on any arrangement, agreement, representation or understanding not expressly set out in the Finance Documents."

The Facilitation Fee

71. The Respondent was aware that the investment manager, would receive a payment of 50% of the sums provided by the Axiom Fund Master to the Firm as a so called "Facilitation Fee" ("FF"), and that the amount of the FF would be paid from the Axiom Fund Master's funds and added to the debt due from the Firm to the Axiom Fund Master under the LFA. The FF was referred to in the BT report dated 3 April 2012, the Respondent's emails to DR 28 February to 8 October 2012 and the LFA itself.

72. The intention of the LFA appeared to be that the Firm would repay the Axiom Fund Master a sum equal to the FF when the loans were due to be repaid, although this was unclear.

73. The FF was in addition to interest charged on the loan of 15% for the first 12 months of the loan and 1.5% per month if the loan was outstanding for more than 12 months.

Monies Received By The Firm

74. The Firm received the sum of £3,150,343.26[7] (excluding FF's) between May and August 2012 as follows:

- £668,111.63 on 9th May 2012;
- £668,118.00 on 9th May 2012;
- £668,113.63 on 22nd May 2012 and
- £1,146,000 on 2nd August 2012.

75. The Respondent was aware of the receipt of these monies and of the Firm's use of them. Allowing for the Firm's liability for the 50% FF (but excluding FGI Insurance), the Firm's total liability to the Axiom Fund master was in excess of £4,799,734. £308,591.14 was repaid in September 2012.

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[6] The definition of Finance Documents at clause 1 of the Agreement was "this Agreement, the Account Charge and any other document designated as such by the Investment Manager and the Panel Firm."

[7] See footnote 1 above

The Firm's Use Of The Monies

76. Of the monies advanced by Axiom, the Respondent and the Firm made the following payments:

- £251,346.29 was used to pay the Respondent's personal tax liabilities;
- £62,138.33 was used to pay the personal tax liabilities of Catherine Copp (a former partner);
- £151,446.99 was used to pay PAYE and National Insurance of the firm;
- £7,405.834 was used to pay a VAT surcharge;
- £2,340 was used to reimburse HMRC for legal costs;
- £102,600 was used to pay Leads LLP (a claims farming company);
- £169,350 was used to pay Norton Accord in respect of a debt owed to Norton Accord for computer services;
- £2,333,713.81 was used by the Firm in order to keep it afloat by payment of bills, overheads and other costs.

Allegations 1.4 and 1.5

77. On 14 October and 15 November 2011, the Respondent instructed that the sums of £32,000 and £40,000 (respectively) were transferred from the Firm's client account to the Firm's office account. Bank statements showed that the Respondent had issued personal cheques in the sums of £32,000 and £40,000, both of which were (according to the Respondent), erroneously paid into the Firm's client account. At the time that the cheques were paid in, the Respondent had insufficient funds in the account on which the cheques had been drawn; each cheque was dishonoured. This led to a shortfall on client account which subsisted from 14 October 2011 until 7 December 2011. The Respondent repaid £40,000 to the client account on 21 November 2011, and a further £32,000 on 7 December 2011.

Witnesses

78. The following witnesses provided statements and gave oral evidence:

- Nicholas Ireland – Investigation Team Manager in the Investigation and Supervision Department of the SRA
- Paul Stott – The Respondent
- Dr Ruth Jarman - Psychiatrist

The following witness provided a reference and gave oral evidence as to the Respondent's character:

- Maxwell Julian Gold

79. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case, made notes of the oral evidence, and referred to the transcript of the hearing.

The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

80. The Applicant was required to prove the allegations beyond reasonable doubt. Mr Dutton submitted that the SRA's case would not be made out "If at the end of the case, there is reasonable doubt created by the evidence given by either the prosecution or [the Respondent]": Woolmington v DPP [1935] AC 462. The Tribunal, it was submitted, was entitled to draw appropriate inferences (including, if relevant, as to the Respondent's propensity to be untruthful) from the proven facts.

81. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Other than breaching the SAR and Principle 6 as regards allegations 1.4 and 1.5, the Respondent denied the allegations, including denying that he had acted dishonestly or recklessly where that was alleged.

82. The Tribunal when determining the allegations of dishonesty considered the testimonials submitted on the Respondent's behalf. In particular the Tribunal considered the oral evidence of Mr Gold who stated that the Respondent practised in a small community, where solicitors knew each other well. If lawyers behaved improperly it would become easily known and he had never heard any allegations of that nature levelled at the Respondent. Further, the Respondent was well respected in the wider community, and had been involved with a number of social and charitable organisations. One particular organisation was faced with closure; the Respondent worked with the committee members to help avoid that. Whilst he was aware of the allegations against the Respondent, it was his view that the Respondent would be a severe loss to the profession when the profession was generally going through a difficult time. He had seen the other testimonials submitted on the Respondent's behalf, and knew almost all of the writers, whom he knew to be respected members of local society.

83. **Allegation 1.1 - The Respondent caused or permitted the Firm to accept monies received from the Axiom Fund totalling £3,150,341.56 in circumstances where it was improper for the Respondent to do so. The Respondent's conduct was improper for the following reasons (and each of them):**

1.1.1 He knew that the firm had not complied with the terms of the LFA pursuant to which the monies were purportedly advanced, and which was intended to protect the interests of the investment fund and of the ultimate investors in the investment fund:

1.1.2 He knew that the LFA pursuant to which the monies were purportedly advanced did not reflect the purpose for which the firm intended to use and/or in fact did use the monies, and that the intended and actual use of the monies was not properly documented by the Respondent and the Investment Manager.

1.1.3 He had no intention that the firm would repay the monies as required by the LFA and/or knew or was reckless as to the fact that payment was very unlikely;

1.1.4 He misused the funds received by failing to apply them only towards "Eligible Legal Expenses", as defined in and required by the LFA;

1.1.5 Despite being on notice of the serious risk that the investment fund's investment manager in arranging for the monies to be paid to the firm was acting fraudulently and/or in other serious breach of duty to the investment fund and/or the ultimate investors, he failed to carry out any or any sufficient enquiries reasonably to satisfy himself that the payments (and the assumption of a liability to repay a total of £4,948,1803 inclusive of the facilitation fee and insurance premium) did not involve any such conduct by the investment manager;

1.1.6 He unreasonably risked the firm being a party to transactions which were a fraud on the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the investment manager towards them (or one of them); and/or

1.1.7 In all of the circumstances, as the Respondent well knew or suspected, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.

The Respondent thereby acted without integrity, in breach of Principle 2 of the SRA Principles, and behaved in a way that did not maintain the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the Principles.

Applicant's Evidence and Submissions

83.1 Mr Dutton submitted that the core issue raised by allegation 1.1 was whether it was proper for the Respondent to consent to the Firm receiving and using the money in circumstances where the LFA, on the Respondent's case, was wholly inconsistent with his intended (and actual) use of that money. The Respondent claimed that he had entered into an oral agreement with DR, which enabled him to use the funds as he did, and that his use of the funds was not governed by the LFA which he signed on 27 April 2012. Mr Dutton submitted that the Respondent's reliance on the alleged oral agreement contained features which fatally undermined his case, namely:

- Despite the significant size of the allegedly agreed loan, the agreement to advance such sums was not documented anywhere by the Respondent.

- The Respondent's explanation required the Tribunal to conclude that in addition to the oral agreement, the Respondent entered into two further written agreements which he knew contained contractual promises that he did not intend the Firm to fulfil.

- Further, the Tribunal would be required to accept that the Respondent was not suspicious of the circumstances in which he was provided with funding from Axiom. Those circumstances being that despite his having been told that any potential lender would be reluctant to lend to the Firm (due to the Firm's financial difficulties), over £3m pounds was lent to the Firm, on the basis of an oral agreement which was inconsistent with the two signed written agreements.

83.2 It was contended that the Respondent knew, or should have known, that DR was not acting with authority, and that the provision of funds to the Firm was, at the very least, in the circumstances, suspicious and dubious.

83.3 Mr Dutton submitted that it was important to understand the financial position of the Firm when the funding was arranged. As was accepted by the Respondent, from around 2010, the Firm began to experience financial difficulties. In particular, the Firm experienced a long delay of several years in the payment of (at that time) an unspecified sum of costs that was due to it upon successful settlement of the Sandon Docks class action claim.

83.4 By 2011, both of the Respondent's partners had left, leaving him as the sole equity partner in charge of the Firm. The Firm fell into arrears on its payments to HMRC and was served with a statutory demand on 23 August 2011. At that time the Respondent was "actively seeking funding sources".

83.5 In or around November 2011, HMRC petitioned for the Firm to be wound up. On 18 January 2012, the Respondent was informed by an experienced insolvency practitioner, solicitor and Deputy High Court Registrar, that any potential lender would be reluctant to lend to his Firm upon the discovery of the winding up petition and that:

> "unless [the Respondent] was very confident [he] can get the money and pay and get the petition dismissed on the 19th March [he] needed to look at whatever "plan B" might be possible such as pre-pack administration".

83.6 It was at this critical financial time for the Firm, that the Respondent appeared to have been introduced to DR, who, it was submitted, purported to represent the Axiom Fund. A meeting between the Respondent and DR took place on 9 February 2012. In his statement the Respondent stated that at some point before signing any facility agreement, "a facility had already been arranged with Axiom", with "the actual agreement made" being "clearly reflected in the [BT] report".

83.7 The Respondent, it was submitted, was more specific in the evidence he gave to the High Court for the purpose of his application to set aside a statutory demand made against him personally by Axiom Fund's receivers. His evidence in those proceedings was that:

> "… [T]he funds provided by [the Axiom Fund] to [the Firm] … were provided pursuant to an oral agreement made on or around 9 February 2012 between myself and [DR] on behalf of [the Axiom Fund]"

83.8 The Respondent, it was submitted was even more specific in the letter of 19 February 2014, sent to the Applicant on his behalf by his solicitors, which stated:

> "The offer to provide practice funding was extended by [DR] on behalf of Axiom in or around February 2012 and was subject to [the Firm] agreeing to pay [BT's] expenses of providing a due diligence report….The express terms and conditions agreed were:
>
> - That [the Firm] would meet [BT's] charges of preparing a due diligence report.
> - That [the Firm] would become a panel solicitor of Axiom and enter into the relevant panel agreements.
> - That [the Firm] would conduct file reviews of some 4000 industrial disease cases
> - That Axiom would provide immediate funding to enable [the Firm] to meet its most pressing debts as expressly notified to Axiom and recorded in [BT's] report
> - That [the Firm] would offer security over its claims for costs in the Sandon Dock litigation should Axiom so require
> - Initial funding would be provided in the sum of £1.4m, with further funding potentially available by negotiation (note that this was raised to £2.1m by the time of the [BT] report as recorded in that report)
> - Repayment would be made from the proceeds of the Sandon Dock litigation".

83.9 Mr Dutton submitted that it was seemingly the Respondent's case that DR, a representative of the Axiom Fund responsible for investing funds of private investors, agreed to advance over £3m (net of fees and interest) to a heavily insolvent firm that was already subject to a winding up petition on the basis of (and pursuant to the terms of) an oral agreement made during a meeting in a hotel. Despite having been informed that any lender would be reluctant to advance significant sums to a Firm that was subject to a winding up petition, the Respondent's position was that he was not at all suspicious of the extremely informal circumstances in which DR, purportedly with Axiom's authority, agreed to provide significant sums to fund the Firm. This, it was submitted, was simply not credible, particularly for a solicitor with the Respondent's experience.

83.10 Having entered into the alleged oral agreement, the Respondent then completed and submitted the Axiom "Legal funding facility application form" in or around February or March 2012 requesting a facility of £1.4m. The written application revealed that (apart from significant debts to HMRC) by the time of its entry into the oral agreement for the provision of £3m the Firm already had a significant amount of borrowing, including:

- £274,003 from Sutherland Professional Funding repayable on settlement of cases;
- £41,221.21 from Creative Capital Funding repayable on settlement of cases;
- £2,692.76 from SHF Legal Funding repayable on settlement of cases;
- £1,663.75 from Case Funding Limited repayable on settlement of cases;
- £115,585.69 overdraft with Lloyds bank;

- £6,805.62 from Kingsway Asset Finance (for disbursements)
- £52,250 from Siemens for the rental of equipment;
- £23,750 from Xerox Finance Photocopiers for the rental of equipment;
- £34,563.86 from Aldemore Bank for IT funding;
- £35,412.9 from Dell Finance for IT equipment;
- £35,412.90 from De Lage Landen Leasing Limited for IT equipment; and
- £13,170.23 from Grenke Leasing Limited for IT equipment.

83.11 From the Firm's existing borrowings, it could be seen that the Respondent was experienced in obtaining funding for the Firm and, accordingly, would have been familiar with the usual procedures followed to obtain such funding. The fact that DR did not request the documenting of the terms of a substantial loan, which he agreed to advance to the Firm on behalf of the Axiom Fund, must at the very least have struck the Respondent as unusual. The Applicant submitted that the arrangement with DR was obviously dubious and would have seemed so to the Respondent at the time.

The Baker Tilly Report

83.12 As part of the loan application process, a financial due diligence report was prepared by BT. A draft version of the report dated 17 March 2012 was reviewed and commented on by the Respondent before the version dated 3 April 2012. The covering letter made it clear that the report was being prepared to assist Check Mate "in connection with its assessment of [the Firm's] application for finance submitted to the Axiom Legal Financing Fund". Under the section 'Scope of Review and Other Important Information', BT made it clear that the report was not a recommendation, stating that: "Our work and findings shall in no way constitute recommendations regarding completion of the Proposed Transactions", and further that in accordance with the terms of their engagement, BT "had no responsibility for commercial or legal due diligence." Given the very clear expression of the BT remit, it was submitted that the BT report could not and did not contain any legal terms of the Respondent's agreement with the Axiom Fund. Nor could the existence of this report have provided him with any comfort as regards the acceptance and use of Axiom money in a manner wholly inconsistent with the LFA.

83.13 The report described the financial difficulties the Firm was experiencing:

> "[The Firm] has significant cash flow problems which were originally caused by a retrospective repayment on the Miners Compensation Scheme of £1.2m and a reduction in bank facilities of £400k and then exacerbated by the time taken to resolve the payment of costs which remain outstanding on a large group action, referred to as Sandon Dock.
>
> There are currently winding up petitions against [the Firm] and bankruptcy petitions against [the Respondent and his former partners], raised by HMRC for VAT and PAYE arrears of £159k and income tax liabilities of £323k.
>
> There are other significant liabilities that are overdue for payment including VAT and PAYE of £666k, partners' income tax liabilities of £252k and rent arrears of £46k"

83.14 Those outstanding liabilities exceeded the £1.4m loan which the Firm requested in its application.

83.15 BT noted that whilst the Firm had applied for funding of £1.4m, the projections prepared were on the assumption that £2.1m would be provided by Axiom.

83.16 The report noted that it was proposed that £1.6m of the £2.1m funding to be received would be used to discharge the Firm's historical liabilities to HMRC and only £500k of the funds would be used to fund new Industrial Diseases cases. There would then still remain other liabilities which posed "a risk that [the lenders] may take action to recover the balances before [the Firm] was in a position to settle them".

83.17 BT stated that this was "not a standard disbursement funding lend for Axiom".

83.18 The main security offered to Axiom was the assignment of the amounts due in the Sandon Dock case. BT strongly recommended that Axiom "take legal advice to ensure you get a first legal charge on the proceeds from the Sandon Dock case and to ensure there are no other claims on these monies….When the facilitation fees and interest are added to the Axiom loans, the amounts owed to Axiom totals £3.5m which is likely to exceed the value of the security available from the assignment of the Sandon Dock case debtor."

83.19 BT highlighted that excluding exceptional income, the Firm had made a loss of c. £270k in the 10 months to 31 January 2012. In addition, it was noted that:

> "Ingrams is currently operating at a loss, the January [2012] management accounts showing a loss of £39k for the month.
>
> There are ongoing cash flow problems … and problems have been exacerbated by high partner drawings. …
>
> £169k of the £201k in Loans relate to new loans (mostly sale and leasebacks arrangements) that have been taken out in December 2011/January 2012 on various pieces of computer equipment. These appear to have been taken out to fund ongoing operations. We note the amounts borrowed are far in excess of the book values subject to sale and leaseback."

83.20 Baker Tilly concluded that:

> "The proposed transaction has significant risks. The firm has demonstrated poor financial management historically and is currently loss making. … At present Ingrams is insolvent. … The financial projections are unreliable at this stage because they only have illustrative figures for the new ID book using simplistic assumptions which need to be refined once Management has an understanding of the book".

83.21 The Respondent, in his statement, asserted that the BT report contained the "details of the agreement which had been reached with [DR]". However, it was submitted, he failed to identify the relevant terms or the passages of the report containing such terms. The report did not mention the existence of the oral agreement, and was clearly

being prepared in anticipation of an agreement that would be entered into; BT specifically referred to the "proposed transaction".

83.22 Mr Dutton submitted that not only did the BT report clearly not contain the terms of a loan agreement, it could not in any way be said to evidence a prior agreement with Axiom whereby Axiom funds could be used for purposes not permitted under the LFA. It would be odd, it was submitted, to undertake due diligence after a binding agreement had already been reached, and for that due diligence to refer to a future proposed transaction.

83.23 It was the Applicant's case that in entering into a written contract that the Respondent knew contradicted the intended purpose, and the failure to document at all what was said to be the true terms of the contract, made the receipt and use of the money improper, and thus, on the Respondent's own case, allegation 1.1 could be upheld. However, the Applicant's case went much further. Mr Dutton outlined seven reasons that individually and cumulatively made the receipt and use of the Axiom funds improper. It was the SRA's case that the proof of any one or more of those reasons was sufficient to prove the allegation.

83.24 Mr Dutton submitted that the first four reasons could be taken together (and did not appear to be disputed, as a matter of fact):

83.25 Firstly, the Respondent knew that the Firm had not complied with the terms of the LFA, pursuant to which the monies were purportedly advanced, and which, to his knowledge, were intended to protect the interests of Axiom and/or the ultimate investors. In particular, the Respondent knew that:

- Neither he nor his firm had provided Tangerine with the documents and other information that was a condition of drawing down sums in accordance with clause 3 and Schedule 1 of the LFA, or with the Utilisation Requests required by clause 4. These included "Financial Guarantee Insurance" (as defined, with the Axiom Fund Master as co-insured, covering amounts outstanding under the LFA (as required by clause 3.1.5 and 12.3, and Part A of Schedule 1) and a copy of "Legal Expenses Insurance" (as defined) in relation to the relevant Claimant and Claim (as required by clause 3.3 and Part C of Schedule 1), neither of which the firm obtained. Accordingly, the Respondent knew or should have known that the insurance arrangements upon which investors were entitled to rely had not been implemented and that funds advanced to the firm were uninsured;

- Alternatively, the Respondent should have checked to see that Tangerine had arranged appropriate insurance, as covered by the FF the Firm paid to Tangerine. Had he done so, he would have seen that the insurance only covered litigation funding provided for cases which were in line with what the Axiom Fund's investors expected, namely simple litigation cases likely to conclude within a year;

- Neither the Respondent nor his Firm had provided Tangerine with details of 'Eligible Legal Expenses' for which the Firm requested funding in accordance with clause 3.2 and Part B of schedule 1 of the LFA;

- The Respondent and the Firm had not paid the monies into a client account; and

- The Respondent and the Firm had not executed a fixed charge over a collection account in accordance with clause 7.6 (a)(iii) of the LFA.

83.26 Secondly, the Respondent knew the LFA did not reflect the purpose for which the Firm intended to use the money, and that the intended and actual use of the money - repayment of significant personal and practice debts and general practice funding (rather than funding of the conduct of cases in respect of which the loans were advanced) - was not documented at all by the Respondent and DR.

83.27 Thirdly, the Respondent had no intention that the Firm would repay the loans within 12 months of draw down, as required by the LFA. The BT report noted that without the receipt of the Sandon Dock costs (the timing of which was expressly stated to be uncertain), the management expected that the Firm would make a loss in 2013 (the year when it ought to have been repaying over £4.5m worth of loans (with interest and FF's). The Respondent failed to explain how the Firm expected to repay the loans within 12 months, especially given its existing borrowing and in the absence of any profit-making cases in the pipeline.

83.28 The fourth reason was that the Respondent misused the funds received from Axiom by failing to apply them only towards "*Eligible Legal Expenses*", as required by the LFA. The Respondent stated that he used the monies in accordance with what was set out in the BT report. Mr Dutton submitted that this was incorrect; monies were used to repay a debt of £169,350 to Norton Accord; this was not mentioned in the BT report.

83.29 The clear and obvious effect of the express terms of the LFA, it was submitted, was that the Firm could not use the funding for its general expenses or indeed to repay the Firm's and the Respondent's personal significant debt liabilities. The express terms of the LFA were fundamentally inconsistent with what the Respondent says he had agreed orally with DR. The Respondent's explanation was that the monies were in fact provided under a different oral agreement with DR, which was documented in the BT report. This, it was submitted, was not only implausible, but was also wrong. If it indeed were the case that an agreement for the provision of over £3m worth of funds was already concluded, it was unclear why, on the Respondent's own case, DR required him to sign the LFA. The requirement for signing the LFA, was, it was submitted, clearly more than a matter of formality. Notably, no funds were advanced to the Firm until the LFA was signed in April 2012. Mr Dutton invited the Tribunal to find that the Respondent signed the LFA in April 2012 because he knew that Axiom required an agreement to be signed on the terms of the document before any funds could be released. In his evidence, the Respondent explained that prior to receiving the agreement he did not know what it would say, "but obviously to take advantage of the funding we would have to become a panel member. … There was always going to be an agreement to enter into. You had to be part of the panel, but it was all subject to the [BT] report anyway."

83.30 The Respondent, it was submitted, had failed to explain why he signed the LFA, which plainly contradicted the terms on which he claimed his Firm was obtaining the funding. Had he honestly believed that the terms of his Firm's lending arrangements

with the Axiom Fund were already agreed orally (and documented in the BT report), he would not have agreed to sign two further written agreements (both containing an entire agreement clause) which contradicted what on his case was already agreed with DR, a person he considered to have the Axiom Fund's full authority. At the very least, an honest solicitor would not have signed documents agreeing to borrow up to £20m without enquiring why those documents did not accurately record the deal which he thought was agreed.

83.31 Further, KPMG wrote to the Respondent on 16 November 2012, to inform him that the investment management agreement with Tangerine had been terminated, and that KPMG had been "engaged by [Axiom] to oversee its interests in the [LFA]". In the notice attached to that letter, it was made clear that KPMG would be "performing the duties of the Investment Manager … contemplated by the [LFA]". A telephone conference was arranged between the Respondent and KPMG. Mr Dutton noted that when the Respondent spoke to KPMG, on 21 November 2012 he did not mention the alleged oral agreement.

83.32 The facts comprising the first, second, third and fourth reasons outlined above were a sufficient basis for upholding allegation 1.1 against the Respondent. In signing not one but two loan agreements purportedly "as a mere formality" in the knowledge that they were both flatly inconsistent with what were said to be the "true" terms of the lending contract and which contained contractual promises that the Respondent did not intend to keep, the Respondent fell well below the standards the public would expect of a solicitor and had acted without integrity and dishonestly. Even on his own case, the Respondent had signed an agreement whose terms he did not intend to keep, in the knowledge that it contained a false record of the true terms, and that there was no document that recorded what was stated to be the 'true' terms. This was inconsistent with the standards expected by the public of a solicitor. Further, a solicitor acting with integrity would not enter into such a contract.

83.33 However, the circumstances that made the receipt and use of the Axiom money improper did not end there. The fifth circumstance was that the Respondent was on notice of the serious risk that Tangerine was acting fraudulently, or committing some other serious breach of duty, towards the Axiom Funds and the ultimate investors. The Respondent, as an experienced solicitor, would (and in any event should) have recognised and understood the implications of the following indicia of possible fraud or other serious wrongdoing on the part of Tangerine/DR:

- As the Respondent knew, Tangerine had failed to ensure that the Firm complied with the terms of the LFA as regards both the purpose for which monies could be used and the manner in which they could be drawn down, and had failed to document properly the provision of funding. Despite the large amounts of money involved, and despite the fact that Tangerine was under a duty to act as a responsible investment manager, the arrangements put in place by Tangerine were informal in the extreme. The Respondent was not required to sign any document acknowledging receipt of the money; the money just arrived in the Firm's account following a drawdown request from the Firm. The Firm also never received a formal loan account statement from the Axiom Fund Master or Tangerine setting out the sums borrowed and owed;

- The LFA was inconsistent with the alleged oral agreement that the Respondent and DR allegedly entered into;

- None of the alleged terms on which over £3m of investors' funds were lent to an insolvent firm were recorded in writing;

- The alleged oral agreement permitting the Firm to use over £3m of funds lent to it for the repayment of its and the Respondent's (and his former partner's) significant debts and for general practice funding was inconsistent with the investor Presentation read by him (see paragraph 58 above).

- At the same time, the Respondent (according to his witness statement) "was led to believe" that the signing of the LFA, which was plainly inconsistent with the oral terms allegedly agreed by him with DR, "was merely a formality". This, it was submitted, was a proposition as to signing the LFA that simply could not be advanced;

- The amount of the loan which the Axiom Fund was prepared to lend to the Firm casually increased more than ten-fold from £1.4m requested in the Firm's application to £20m (as per the LFA) despite the fact that the BT report concluded that lending even £1.4m to the Firm involved "significant risks". The Respondent could not have honestly believed that Axiom, had it been acting properly, would have been prepared to lend £20m to his Firm. He must have suspected that DR was acting improperly;

- The Respondent provided no explanation for such an increase in the amount that the Axiom Fund was prepared to lend to the Firm and none appeared to have been provided by Tangerine or DR. No questions appeared to have been raised by the Respondent in respect of such an unusual increase in the level of funding despite the fact that he was previously informed by an insolvency practitioner, that any potential lender would be reluctant to lend any funds to his Firm, let alone over £20m. Mr Dutton submitted that the Respondent, in the circumstances could not honestly have believed that Axiom would be prepared to arrange a £20m facility;

- The BT report reviewed by the Respondent noted that the use of funding to repay significant practice and personal debts was not "a standard disbursement funding lend for Axiom", yet he failed to ensure that such an unusual use of the funding was recorded in writing and signed two LFA's which were inconsistent with such use of Axiom funds;

- The Respondent knew that Tangerine received a FF equal to 50% of the loan (albeit he says that the FF was not mentioned to him "at the outset"). The existence of the FF and the fact that it would be repayable by the Firm was mentioned in the BT report which the Respondent reviewed before signing the LFA, and before any funds were advanced to the Firm. It was wholly unclear on what basis the Respondent understood such a fee to be "notional" as stated in his witness statement; he had, in fact, undertaken an obligation to pay the FF. Further, the FF was suspicious because of its size and the incentive it gave Tangerine to lend recklessly on behalf of the Axiom Fund, and also because it

substantially increased the cost of funding to the Firm, and thereby made the funding even riskier from the perspective of the Fund;

- Tangerine made no proper assessment of the Firm's ability to repay any of the loans, whether the one granted under the purported oral agreement or the one recorded in the LFA dated 27 April 2012, despite the conclusion in the BT report that the Firm was insolvent and its management expected it to make a loss in 2013, the year when the debt was due to be repaid. On the Respondent's case, Tangerine made a decision to lend over £3m to the Firm, and entered into an oral agreement to that effect, on or around 9 February 2012, before Tangerine received any information about the Firm and before BT even began to prepare its report for the purpose, according to the Respondent in his statement, of "allowing Axiom's management to make an informed decision";

- The Respondent told the SRA that he did not do any due diligence into how investors expected the Firm to use their money. He did not obtain or read the OM or the SOMs, despite the fact that these documents were publicly available. If the Respondent did not obtain or read the OM and/or the SOMs, he was wilfully blind and/or reckless as to the contents of those documents in the light of the matters referred to above, and the notice which the Respondent had as to the permitted use of the money.

- Given the facts set out in the BT report the granting of an unsecured facility of £20m to the Firm, which was insolvent, was reckless in the extreme, and as the Respondent knew, demonstrated that the prudent approach to funding which was reasonably to be expected of an investment manager in Tangerine's position was wholly absent. The conduct of Tangerine/DR was not proper or reputable and must have appeared to be highly suspicious; the Respondent was clearly on notice of the dubious nature of the arrangement, yet he continued with it.

83.34 Mr Dutton submitted that the circumstances set out above individually and/or cumulatively put the Respondent on notice at all material times at least that there was a serious risk that Tangerine, in arranging and purporting to agree the funding to the Firm on behalf of Axiom, was exceeding its authority to act on behalf of the Axiom Fund and/or was not acting in good faith in Axiom Fund's best interests and/or was taking unauthorised fees and/or was defrauding the Axiom Funds and their investors.

83.35 Sixthly, in all the circumstances, the Respondent unreasonably ran the risks that:

- He and the firm were party to a fraud of the Axiom Master Fund and of the ultimate investors, or that involved other serious breaches of duty by Tangerine;

- He and the firm were benefitting from Tangerine's wrongdoing.

83.36 Seventhly, in all the circumstances, as the Respondent knew or should have known, the funding was dubious, and he should not have accepted or used it.

83.37 The Respondent could not therefore properly cause or permit his firm to accept and use the monies received without carrying out enquiries that reasonably satisfied him that Tangerine was acting within its authority, and in good faith in the best interests of

the Axiom Fund Master, and that the Axiom Funds and their investors were not being defrauded.

83.38 The Respondent failed to make any or sufficient enquiries in this regard (such as disclosing the material facts to the board of directors of the Axiom Funds, and obtaining information from the Axiom Funds that reasonably dispelled any suspicion concerning Tangerine).

83.39 The Respondent did not ask to see the agreement between the Axiom Funds and Tangerine to check the scope of Tangerine's remit. Had he done so he would have seen that Tangerine had very limited capacity to vary the LFA, and any such variation had to be in line with investor expectations. The Respondent deliberately refrained from making enquiries lest he learned something he would rather not know concerning Tangerine's conduct and its authority to arrange the funding.

83.40 In all of the above circumstances, as a matter of professional conduct the Respondent had a choice, which was either to make such enquiries as were necessary reasonably to satisfy himself that Tangerine/DR were not exceeding their authority or otherwise acting improperly, or not to proceed at all. It was unnecessary to speculate as to what responses the Respondent might have obtained in relation to any enquiries he ought to have made, since the impropriety inherent in a solicitor accepting large amounts of money in circumstances that are objectively suspicious without making reasonable enquiries does not depend on what the outcome of such enquiries would have been.

83.41 Furthermore, whether or not the enquiries that the Respondent should have made before accepting the loans would have been satisfactorily answered, an honest solicitor would have refused to sign an agreement that completely misstated, and was inconsistent with, the purposes for which he intended to use the money. The Respondent signed such an agreement not once but twice.

83.42 Mr Dutton submitted that the Respondent's scant answers to allegation 1.1 did not bear scrutiny. He had failed to explain why, in the face of all of the suspicious circumstances identified in paragraph 83.34, he failed to make any enquiries whatsoever into the Axiom Fund and, in particular, failed to review any of the publicly available investor information.

83.43 The suggestion that the LFA either never came into existence and/or was waived, as advanced by the Respondent in his solicitors' letter of 13 January 2014, or that the contract was a mere formality, as advanced in his statement and his oral evidence, was unsound and incredible. The LFA was signed by the Respondent. If, as was contended, the Respondent believed he was receiving general practice funding from Axiom, there was no point in him signing a written agreement which prevented such expenditure nor in Axiom itself signing and executing the agreement, and returning it to him. Mr Dutton invited the Tribunal to find that it was incredible that an investment fund would be prepared to advance £3.15m entirely pursuant to an oral arrangement with one of its managers and in circumstances where the oral arrangement was entirely contradicted by the written agreement. It was also incredible that an investment fund would agree to lend money to a solicitor for him to pay his tax bill and past debts; this was not an investment which would generate any income for the Fund or the investors.

83.44 The Respondent's contentions were incredible both as a matter of common sense and as a matter of contract law. It was incredible that an investment fund would agree to lend millions of pounds to a heavily insolvent Firm without documenting such an agreement in writing. It was even more incredible that having gone to the trouble of documenting a loan agreement in writing and signing such an agreement, Axiom agreed to lend to the Firm on terms orally agreed between DR and the Respondent during a meeting in a hotel before any due diligence was conducted on the Firm.

83.45 The Respondent's denial that Axiom had parted with money on the terms of and subject to the LFA suggested a degree of ignorance and naïveté on his part which was incredible.

83.46 It was submitted that the Respondent did not believe that the LFA did not come into operation or that it was "waived": on the contrary he knew that the LFA was the only mechanism by which funds could be obtained - the provision of the funds appeared to be in accordance with the purposes of the Axiom Fund.

83.47 The Respondent's assertion that he entered into an oral agreement with DR acting on behalf of Axiom whereby DR agreed that the monies advanced by Axiom could be used for the purpose of discharging personal and practice debts and not for the funding of disbursements on specific cases as required under the LFA was untenable, and was not accepted by the Applicant as:

- The Respondent was an experienced solicitor who, it was submitted, would have been and was aware of the restricted permitted uses of monies coming from the Axiom Fund.

- In March 2012, and prior to receiving any money from Axiom the Respondent was provided with a copy of the Axiom Presentation by MP. The Tribunal was invited to conclude that the Respondent must have read this documentation at some point prior to receiving Axiom monies. This document made it clear that loans were to be provided by Axiom for the funding of cases.

- By his solicitors letter of 13 January 2014 the Respondent confirmed:

  > "That he read the [LFA] and signed the [LFA] on 27th April 2012. [The Respondent] returned the [LFA] to Dawn Cummings in the post in early May 2012 and Dawn Cummings signed the [LFA] on behalf of Axiom on 10th May 2012".

- The LFA made it clear that there were limited uses to which Axiom Fund monies could be put. By signing the Agreement, and having read its terms, the Respondent knew that he was bound only to use the monies in accordance with the purposes set out in the LFA.

- If, as the Respondent asserted, he believed that DR was permitting him, pursuant to some oral arrangement, to use the funds outside the permitted purposes of the LFA then the Respondent would either (a) not have been prepared to sign the LFA or (b) have insisted that an agreement be drawn up which reflected the oral

arrangement allegedly made between himself and DR. His failure to take either of those steps demonstrated that he knew that the only permitted purposes for receipt of the Axiom Funds were those contained in the LFA and that DR was acting outside the scope of his authority in any oral arrangement which purported to permit other uses.

83.48 In relation to the Respondent's claims that he believed that DR had actual or ostensible authority to permit Axiom making a loan of £3.15m for purposes other than those specified in the LFA, the Applicant submitted that:

- An honest solicitor, when seeking practice funding, would expect the person making the arrangements on behalf of the lender to do so with documentation which reflected what the solicitor required, in this case, very substantial personal and practice loans. However, the documentation did not reflect what the Respondent says was the agreed purpose of the loan. In those circumstances, if the Respondent had been acting honestly, he would have known that DR did not have actual or ostensible authority to bind Axiom to a loan of over £3m to assist in the payment of personal indebtedness of current and former members or in the general running of the Firm.

- Further, the circumstances in which the loan was made were themselves such as to raise in the mind of an honest solicitor substantial suspicion as to whether DR had any authority to do what he was doing. In particular the discussion in relation to the alleged oral agreement was never reduced into a formal mutually binding written contract between the Firm and Axiom. On the contrary, discussions appeared to have been relatively loose, imprecise and in so far as they were evidenced by emails, the emails did not evidence an oral agreement for a loan in the sum of £3.15m.

- An honest solicitor would therefore have asked questions of DR as to whether or not he had actual or ostensible authority to do what he was doing and would have caused further enquiries to be made of the Axiom Fund itself had he been acting honestly. The Respondent did not do so because, it was submitted, he was acting dishonestly.

- In the letter of 13 January 2014 the Respondent relied upon the "fact" that there were "professional advisers" involved all round. On analysis, it was submitted, that assertion was incorrect. The Axiom Fund was not represented by independent and reputable solicitors in the making of the loan arrangements to the Respondent or to the Firm. A loan of £3.15m if being made at arm's length and for proper purposes would justify the retention of reputable advisers on the part of Axiom in order to ensure that Axiom's interests were appropriately protected.

- The involvement of BT in conducting due diligence on the Firm could not have provided any comfort to the Respondent as to the propriety of Tangerine's actions in circumstances where the report expressly stated that BT did not provide a recommendation to lend, nor were they advising on the legal terms of any funding agreements. In the absence of any due diligence on the Axiom Fund, it was unclear on what basis the Respondent asserted that it appeared to him that the

Axiom Fund "was well resourced and able to call on numerous advisers in many fields".

83.49 It followed from the foregoing that the purported reliance on so called "professional advisers" did not provide a defence to the allegations made, nor was it a defence to the allegation of dishonesty.

83.50 Mr Dutton submitted that the Respondent took the Axiom funding knowing that he was using the funding in a way that was not permitted, and also knowing that he was not, and was not going to be in a position to repay the money. He was certainly not going to be able to repay it in accordance with the terms of the LFA as it became repayable in 12 months with 15% interest and the FF; there was no way, with his financial circumstances, that he was going to be in a position to do so. On his own case of an oral agreement with no further terms, the funding would have been repayable on demand. He was not in a position to repay £3.15m, when the Firm was insolvent, and he had used the Axiom funding to pay personal and practice liabilities. It was submitted that whichever way the case was viewed, the Tribunal would be driven to the conclusion that the Respondent was both misusing the money and was unable to repay it.

83.51 The inescapable conclusion was that the Respondent had breached Principles 2 and 6 and acted dishonestly in relation to allegation 1.1. A reasonable and honest person would have no difficulty in seeing that the receipt and use of the Axiom money in each and all of the circumstances relied on was dishonest. There was nothing in the evidence to indicate that the Respondent, an experienced solicitor, would not have appreciated that.

83.52 Mr Dutton further submitted that if, having heard the evidence, the Tribunal were to acquit the Respondent of suspecting any wrongdoing and of dishonesty, the matter would not be at an end. Objectively viewed, the circumstances were suspicious even if the Respondent failed to appreciate that. And on any view, whether or not the circumstances were suspicious, the Respondent ought not to have signed the LFA if, as he says, it did not correctly record the oral agreement he reached with DR. The terms on which a solicitor accepts a £20m facility and draws down a loan of some £4.9 million (including the FF and insurance premium) should be properly recorded, not least as regards fundamental terms. On the Respondent's own case, the two written records of the loans from the Axiom Fund contained a wholly misleading record of the fundamental terms of the loan which was in fact advanced to his Firm regarding the purpose for which the money could be used. At the very least, on the Respondent's own case, (which the Applicant did not accept), he fell well short of the standards reasonably expected of a solicitor and failed to maintain the public trust in breach of Principle 6.

Respondent's Evidence and Submissions

83.53 The Respondent explained that in 2010, the Firm had three partners, and operated a largely personal injury practice. The Firm had, it was submitted, a good reputation. In 2010, the Firm began to experience some financial difficulties. The principal reasons for that were not particularly foreseeable, and were not as a result of poor management of the Firm. In 2010, the Firm received a financial blow, which affected

its cash reserves - the Firm had been involved in coal handling agreements, and having received costs on those agreements, had a certain amount of reserves saved up. However, the Government then changed the criteria by which the costs should be awarded, and the Firm was asked to pay costs back to the Government. The total figure was around £1.2m, which was repaid using monies that had been saved for future payments, and was also set off against future fee income.

83.54 The Firm was reliant on personal injury work, and decided then to diversify and develop a more mixed practice, and so developed other areas of work, including wills and probate. It also developed its debt recovery, employment and family departments and acquired a criminal department. At around the same time, due to the problems in the banking world, the Firm's overdraft facility was reduced by £400,000. The Firm also had an unnecessary increase in its tax liability, due to advice that it had received from accountants "which was not particularly good", and there was a significant delay in the receipt of costs from the Sandon Dock litigation. Those cases were settled in 2010, however despite an interim payment received in September 2012, the bulk of the costs for that litigation was not received until 2013.

83.55 In order to cut costs the Firm closed its York office, and following the retirement of one partner, the other partner decided to leave the Firm.

83.56 The Firm got into difficulties with HMRC, and was served with a statutory demand on 23 August 2011, by which time the Firm had been waiting for over 12 months for settlement of the Sandon Dock costs. The Firm did not simply rely on the expected payment of those costs; it investigated all other options open to raise funds, be that through business funding, the Respondent's self-invested pension and taking financial advice. The Firm also considered insolvency.

83.57 Shortly after the bankruptcy petition was issued by HMRC, the Respondent was contacted by a former business partner who agreed to assist. In June 2011, the Respondent had some contact with MP, who was known to the Respondent from his work in the field of litigation funding. The Respondent gave MP a specific brief to try to arrange some funding for the Firm, to pay off the bankruptcy petitions in the main, as that was the most pressing problem that the Firm was experiencing.

83.58 MP began canvassing his contacts in 2011, and shortly after Christmas 2011 he reportedly had some interest from his contacts. The Respondent had made it clear to MP from the start exactly what the funding was required for. The Respondent submitted that there could have been no doubt in MP's mind as to what was required.

83.59 MP entered into discussions with a number of prospective funders. The Respondent considered at the time that the Firm was a viable practice and could offer security for any loan made, primarily because a substantial payment in relation to the Sandon Dock cases was anticipated.

83.60 MP introduced the Respondent to the Axiom fund. The Respondent met with DR and discussed the Firm's needs and the Sandon Dock cases. The Respondent stated that it was made clear to DR at the very start exactly what the funding was required for. He had always been transparent about that. If dishonesty required any sort of furtiveness,

then that was certainly something that he had never been as far as requesting funding from Axiom was concerned.

83.61 The Respondent stated that DR indicated that on balance and in principle the fund would be prepared to assist following a due diligence exercise by BT. Negotiations with DR continued whilst the work was being undertaken by BT: essentially in principle it was agreed, subject to BT being involved, that the Firm would be able to have some funding.

83.62 The Respondent explained that he was well acquainted with BT's reputation and he had no qualms at all about permitting them to conduct the due diligence exercise. Further the BT office that was asked to carry out the due diligence exercise was the local Hull office, and the Respondent was aware and acquainted with the partners in that office, which again, he stated, gave him a degree of confidence and reassurance that he was doing the right thing.

83.63 Further reassurance was obtained through a report in relation to the Sandon Dock monies. The Respondent described this as a "double due diligence exercise that was carried out both on the funds from Sandon Dock that were going to arrive and on the firm generally."

83.64 The Respondent submitted that the BT report contained details of the agreement reached with DR. The Respondent accepted that the BT report detailed the Firm's poor financial position. However the report was based on the costings report from TM Costings, which had been prepared at the suggestion of DR, which, the Respondent believed, was a fairly sensible way of him [DR] establishing whether or not the monies could be repaid.

83.65 The Applicant had made an issue of the varying figures that it had been suggested that the Firm was likely to receive in relation to the Sandon Dock litigation. Whilst the larger amounts were calculated on a best case scenario basis, the BT report had been prepared on the basis of a medium and a bottom line figure.

83.66 During the course of the negotiations with DR, the Firm had agreed to take on board and look at 4000 industrial disease cases. Further, it was agreed that if the Firm took those cases on and dealt with them, any funds generated by those cases would have been used to settle any payments due to Axiom. The Respondent posited that if the Firm had taken on board 2000 of those 4000 cases, and had been successful with those, even on a conservative estimate, those cases might have generated £1.2m in profit costs. However, despite a lot of effort and resources that was put by the Firm into vetting those cases, it was established that only 20 of the cases were reasonable and could be taken on. However, the acquisition of those particular cases was an element of obtaining the funding that was agreed in the general agreement.

83.67 When the Respondent negotiated the deal with Axiom, he explained that he was "obviously interested in it because it would resolve our immediate difficulties with HMRC" and he was also hopeful that it could lead to a long term partnership in terms of the work that the Firm undertook. The Respondent explained that he was convinced at that particular time that the funds generated from the Sandon Dock litigation, together with any monies that may have been generated from the industrial

diseases cases, would have been sufficient to repay the funding. The Respondent stated that he had no reason to believe, at that time, that the Firm would not be able to achieve a significant figure in respect of the Sandon Dock costs. The Firm did not achieve the costs it anticipated, as it had been "worn-down" by the solicitors for the other side; the Firm agreed to a settlement that was probably a little bit lower than it would have been entitled to. The Respondent surmised that the Sandon Dock litigation over the years, probably lost the Firm quite a lot of money in terms of the work actually conducted and the amount the Firm received.

83.68 The Respondent submitted that the SRA alleged that he should have been suspicious of the circumstances in which Axiom provided funding. However, the only document upon which the SRA relied in that regard was one produced in August 2012, which was after the funding had been taken out. Further, Mr Ireland had said in his evidence that the SRA only became concerned in November 2012, which was again after the Firm had taken out the funding. The Respondent submitted that there may have been some concern beforehand with the Tim Schools litigation which took place in 2010. The Respondent stated that he thought that the SRA were probably aware of any concerns with the Axiom fund at that particular stage, whether then they had a responsibility to either put some warning notice out to solicitors or whether they should have communicated that to their field staff was a question that only really the SRA could answer. However, the Firm had taken out the funding two years after Tim Schools had been investigated.

83.69 The Respondent stated that he was not suspicious at the time. From his perspective, Axiom had required the Firm to pay £20,000 plus VAT to BT for a vetting fee, a due diligence fee. BT were a reputable firm of accountants, highly regarded in the Respondent's area and more widely. The purpose of the report was to address the risk and to allow Axiom's management to make an informed decision. The Respondent had no reason at all to believe that DR would not be in a position himself to make those decisions as he was the fund manager.

83.70 The Respondent made it clear from the outset in his discussions with both DR and BT, as to why practice funding was required. He was entirely open about the position with HMRC, and made no attempt to hide that situation from anyone. The Firm was asked to provide a lot of information, and £20,000 was a lot of money to provide for a report. The local representative from BT spent a considerable period of time at the Firm's offices, speaking to the Firm's finance manager and also in preparing the report; it was not just something that was produced as an afterthought. The Respondent explained that in his view, that was the reason that the Firm was able to obtain the funding - had the Firm not passed due diligence, he did not expect that the Firm would have been offered funding at all. The express requirements for funding were clearly stated in the BT report including the reason that funding was required and the purposes for which the funding was going to be used by the Firm. That was the basis upon which the agreement was reached. The agreement was oral, with DR, subject to what the BT report would say and to making sure that the fund managers were absolutely satisfied and that their professional advisers were satisfied.

83.71 The Respondent stated that he knew nothing at all to the detriment of DR at that particular time, and did not meet Tim Schools until after funding was obtained. The Respondent acknowledged that at the time he was facing winding-up proceedings and

this was a high-risk strategy, but his expectations regarding the Sandon Dock costs indicated to him that those representing the Axiom fund were taking a proper approach to lending. He did not believe that it was for him to then second-guess what the commercial decision of the managers of the Axiom fund would be and DR was not at all alarmed by the financial position of the Firm which, it was felt, could be managed by the injection of funds.

83.72 In addition, the Respondent was informed that financial guarantee insurance was going to be taken out at source. Further, the Respondent had made it clear to Kathleen Beenam, (a forensic investigation officer for the Applicant), that he had agreed a funding deal for an injection of £1.4 million into the Firm. That followed on from the meeting that he had with DR where an agreement in principle was reached. Whilst Ms Beenam may have been at the Firm for other matters, she did not raise any issues about the prospect of the Firm obtaining funding. Whilst she was aware of the financial position of the Firm, she was also aware of the anticipated Sandon Dock costs.

83.73 The Respondent stated that he was "surprised" about the FF, and had thought "that it was a fee added to the loan which would be paid on repayment of the loan. And I would have considered it an odd arrangement, I would have questioned it had I known about it beforehand."

83.74 The Respondent explained that he was not given a copy of the LFA until after the BT due diligence was completed and after a facility had already been arranged with Axiom. He was told by DR that the requested funds had been placed with Tangerine, but that the Firm needed to be formally part of Axiom's panel in order for the funding to be released. The agreement was received on the day that it was signed and the Respondent was "led to believe that it was merely a formality because the actual agreement made was that clearly reflected in the BT report." Further, the Respondent did not think that this was at all strange as he "would have been surprised if the terms had suddenly changed by signing that agreement" since several weeks had been spent by BT in preparing the report, at a considerable cost to the Respondent.

83.75 The LFA was signed on 27 April 2012; monies were drawn down in May 2012, and used to pay the HMRC debts in accordance, the Respondent submitted, with the agreement reached. This was to the Respondent's mind the purpose for which those monies had been provided. The Respondent submitted that this was a commercial arrangement; he was not acting for Axiom's representatives or its investors. He was entering into a commercial arrangement with an organisation that appeared to be well-resourced and able to call on numerous advisors. The Respondent provided full details of the Firm's financial position and all the information and co-operation that it was in his power to give. He relied on his broker, MP, and DR as the representative of the Fund.

83.76 The Respondent submitted that it had never occurred to him at the time that there would be a significant problem with the Fund. He had understood that it had operated successfully for a number of years, and had also understood that BT had a significant prior relationship with the Fund. The involvement of BT was central to "assuaging or comforting me in terms of the deal that I was going to do."

83.77 The industrial diseases work was a makeweight to the deal, and it was agreed that the Firm would look at those cases and take them on if appropriate. There was the chance and the possibility, in the Respondent's mind, that those particular cases would generate some revenue; indeed he was surprised when the cases did not turn out to be good cases.

83.78 The Firm also bought in some mortgage mis-selling work, subject to the further funding that was obtained in August. "Those cases were dealt with, and eligible legal expenses, according to the agreement, were paid in terms of the referral fees for those."

83.79 References had been made by the Applicant to the relationship between the Respondent and DR. The Respondent explained that he did not have a close relationship with DR, however DR appeared to him to be working in the best interests of the Fund. Tangerine contacted the Respondent regularly, and the Firm had to produce lengthy spreadsheets; it seemed that Tangerine were actively protecting the interests of the Fund. The Respondent stated that he had "no reason to doubt his [DR's] honesty and integrity."

83.80 In October the Respondent was contacted by Richard Barnett ("RB"), who was a solicitor purporting to act for the Axiom Fund. The Respondent met with RB on one occasion when he was told that Axiom were reviewing their standard panel firm documentation and that new agreements would have to be circulated around the panel once they had been redrafted. The Respondent received the new agreement from RB and signed it. The Respondent submitted that the 22 October 2012 agreement was not relevant to the proceedings before the Tribunal, as the Tribunal was looking at his conduct, the knowledge that he had, and whether or not he ought to have been suspicious of the circumstances of Axiom lending, and whether he ought to have allowed the Firm to accept or use the funds as it did. All of this occurred prior to his receiving and signing the 22 October 2012 agreement.

83.81 Since the Respondent did not have knowledge of the 22 October agreement at the time the funds were accepted and used, he was unable to see how the 22 October 2012 agreement could be relevant in assessing his professional conduct. That agreement however was relevant to the Firm's relationship with Axiom in the civil context. In relation to the civil proceedings, the Respondent submitted that the findings of Registrar Baister were to the civil standard and subject to appeal. The Tribunal operated a much higher standard of proof.

83.82 The Firm received an interim payment in relation to the Sandon Dock costs in September 2012. After paying VAT, the balance of £308,591.14 was submitted to Axiom in October 2012. The balance of the Sandon Dock litigation costs was not actually received by the Firm until late 2013. At that stage, the Firm had entered into discussion with the receivers of the Fund as to how payment could be settled. The Firm was ultimately advised not to enter into any agreements, as it was believed that the Firm had a significant counterclaim to make against the Fund, which continued to be pursued. The note of the telephone conversation with KPMG on 21 November 2012, recorded the discussion in relation to the Firm's position. Further information was requested, and provided by the Respondent. Nothing further was heard from Axiom until Grant Thornton were appointed on 18 February 2013. The

Respondent stated that he was in negotiation with Axiom for a period of time but offers to settle were rejected after months of silence. On 10 March 2014, the Respondent's solicitors' wrote to K&L Gates (solicitors for the receivers) asserting that funds paid to the Firm were not paid pursuant to a written agreement, and seeking disclosure of various documents. Presently, that matter was very much up in the air. There was to be a hearing on Friday, 28 October 2016, at which his solicitors' were attempting to obtain a stay of any proceedings until after the appeal had been heard. The Respondent believed that there were good grounds for an appeal, and leave to appeal on all grounds had been granted by a single judge. If the statutory demand was set aside, the Firm would be pursuing a counterclaim.

83.83 The Applicant produced an interim report, following interviews with the Respondent dated 20 February 2013. That report was not disclosed to the Respondent until 6 December 2013. The Respondent submitted that it was apparent, from that interim report, that the Applicant's investigations were still ongoing. Further information was requested and provided to the Applicant, and the Respondent was interviewed again on 27 June 2013. Further information was again requested from the Respondent and a final report was produced on 29 November 2013, which was sent to the Respondent under cover of a lengthy letter setting out numerous allegations on 6 December 2013. The Respondent's solicitors submitted a 38 page letter on 13 January 2014 with numerous appendices, providing all the documents requested. The Applicant issued a section 44(B) Notice on 12 February 2014, with a response being provided to the Applicant on 19 February 2014. The decision to refer the Respondent to the Tribunal was made on 18 February 2014; however, the Respondent was not informed of that decision until 15 April 2014.

83.84 The Respondent asserted that he did his utmost to co-operate with the Applicant and explain his position.

83.85 In relation to the allegations, the Respondent stated that the allegation that he had acted without integrity in a way which undermined the trust the public placed in him was denied. That allegation (allegation 1.1), centred around the Applicant's claim that he had failed to comply with the terms of the LFA. The Applicant suggested that he had no intention of repaying funds to Axiom and suggested that the circumstances were dubious. The Respondent submitted that he had made it clear in his correspondence with the Applicant and in his evidence that he did not believe that the LFA was the basis upon which the funding was provided to the Firm. It had been his position from the outset that the deal was an oral one and was demonstrated in the BT report. Whilst the Respondent accepted that on a strict reading of the terms of the LFA he did not comply with those, he was entirely honest and open with those representing the Axiom fund as to what his intentions were and he maintained that the agreement which properly governed the Firm's relationship with the Fund was that reflected in the BT report. Further, the Respondent had every confidence that the Firm would be in a position to repay the funds, and he had arranged for repayment of the first interim payment before it would have fallen due under the terms of the LFA. At the time of entering the agreement, the Respondent honestly believed that the Sandon Dock litigation (together with other litigation income) would have generated enough money to repay the loan. The Respondent denied that he was on notice of any risk of fraud or serious misconduct. Whilst he accepted, with hindsight, that it would have been more prudent to have insisted on fully written agreements, he did not

believe that the lack of the same demonstrated a lack of integrity, as he had entered into an oral agreement. Nor did he believe that accepting advice from someone more experienced in a particular field showed a lack of integrity. The Respondent submitted that he was under a duty to be open and frank with the Axiom fund and its representatives at all times and that he had fulfilled that duty in the extensive information provided to the Fund through Tangerine and BT. Further, he had sought to assist KPMG when they temporarily took over the Fund. The Respondent also wished to emphasise that the allegation did not relate to his relationship with, or his conduct of, any client matters. He was alleged to have entered into a commercial agreement with an entity represented by numerous advisers, in circumstances where the SRA, with he believed the benefit of considerable hindsight, considered it unreasonable for him to have done so.

83.86 In relation to allegation 1.2, the Respondent denied that the monies received were client monies, as they were received by the Firm for practice funding. As to the suggestion that the money should have been paid into a separate office account designated for the purpose, again, the Respondent could see no basis for that particular suggestion.

83.87 As regards allegation 1.3, the Respondent denied that he misappropriated the funding. The funds were used in accordance with the purposes for which they had been released to the Firm

83.88 In relation to allegations 1.4 and 1.5, the Respondent accepted, with regret, that he acted in breach of the SAR in relation to the two transfers, which caused a temporary shortfall on the client account for 54 days. The Respondent admitted that in causing the transfers he had fallen into error, but denied that he had acted without integrity or dishonestly. There had been no similar incidents in the five years since these errors had occurred, and having given his explanation to the Applicant in February 2012, the matter was not raised again until almost 22 months later, in December 2013. Further, in each of the three Forensic Investigation Reports, no issues were highlighted in respect of the Firm's compliance with the accounts rules, save for those two errant transfers.

83.89 The Respondent denied that he had acted dishonestly or recklessly; he had been entirely frank and open with all concerned parties. Information had been provided to the Applicant, the Bankruptcy Court in the validation proceedings, BT and Tangerine as requested. He had trusted MP to assist in undertaking due diligence and to advise on a funding solution which met the Firm's needs.

> "I was aware that we had an oral agreement and that's what I was told. And I was given a written agreement later on. I did expect there would be some written agreement at some stage, but our … the borrowing that we took was outside any such agreement. It was on an oral basis, based on what [BT] said"

The Tribunal's Findings

83.90 The parties agreed that £3,150,343.26 (net of interest and the FF) was received by the Firm from Axiom between April and August 2012, and that those funds were used by the Firm. The decision for the Tribunal was whether the Respondent, in accepting

and using those funds, had acted improperly, such that his conduct had breached the Principles as alleged by the Applicant.

83.91 **Particular 1.1.1 – He knew that the firm had not complied with the terms of the LFA pursuant to which the monies were purportedly advanced, and which was intended to protect the interests of the investment fund and of the ultimate investors in the investment fund.**

83.91.1 It was not disputed by the Respondent that the Firm did not comply with all of the terms of the LFA. It was his case that the Firm was not bound by the terms of the LFA; there was a separate oral agreement with DR as to the purpose for which the monies advanced could be used. The Respondent stated:

> "Whilst I fully accept that I did not comply with the terms of the LFA…I maintain that the agreement which properly governed [the Firm's] relationship with the Axiom Fund is that reflected in the Baker Tilly report."

83.91.2 The Tribunal noted the complete absence of any record of the 'oral agreement'; there were no attendance notes of the meeting with DR on 9 February 2012, nor was there any documentation confirming that, notwithstanding the signing of the LFA, the Respondent was not bound by its terms. The Tribunal noted that within the documents, and in his evidence, the Respondent had provided different explanations as to the particularity of the oral agreement. In his statement to the High Court of 8 May 2014, the Respondent stated that:

> "..the funds…provided…to [the Firm] were not provided pursuant to the agreement dated 27 April 2012; they were provided pursuant to an oral agreement made on or around 9 February 2012 between myself and [DR]…It was a term of the agreement that [the Firm] would sign up to the creditor's standard form panel agreement to meet the eventuality that [the Firm] may subsequently seek case specific funding…. No funding was drawn down pursuant to that agreement. ….. It was a term of the agreement that [Axiom] would provide funds for the express purpose of practice funding as described in due diligence documentation prepared for the benefit of [Axiom] …by [BT]..".

83.91.3 At the hearing before Registrar Baister in the Bankruptcy Court on 25 and 26 February 2016, the Registrar summarised what Counsel representing the Respondent explained in relation to the oral agreement, namely:

> "… that it was made between [the Respondent] and [DR] on or about 9 February 2012; it was for a general facility of £20m; and advances were to be repaid in March, April and June 2013; and that other aspects of the oral agreement were evidenced in the [BT] report."

83.91.4 In his solicitors' letter of 19 February 2014 (as detailed in paragraph 83.8), the Respondent set out a number of the terms of the oral agreement; those terms went much further than either of the explanations above. During his evidence, the Respondent stated that the oral agreement included terms relating to interest and repayment.

83.91.5 The evidence upon which the Respondent relied as proof of the oral agreement was the BT report, which he stated, contained the terms of the agreement between the parties. The Tribunal did not accept this assertion. The Tribunal noted that the Respondent, both in his witness statement, and in his evidence had stated that he had "arranged for a significant repayment to be made **before it would have fallen due on the terms of the LFA"** (the Tribunal's emphasis). This, the Tribunal determined, was clear evidence that the Respondent was fully aware that the monies were advanced under the terms of the LFA. Further, under cross examination, the Respondent accepted that the BT report "contained the terms of what we wanted to borrow and what we wanted to borrow it for". When it was put to him that the BT report contained his intention as to how he wanted to use the money, but did not contain the terms of an agreement between the Firm and Axiom, the Respondent replied "it doesn't contain those terms, no." Given the departure from the core purpose of the LFA, namely in the main, disbursement funding, a solicitor with the Respondent's experience, would have ensured that the terms of the oral agreement were properly and expressly documented. The Tribunal found this to be even more so the case for the Respondent, who was well used to obtaining funding for the Firm. The Tribunal referred to the Entire Agreement clause, and in particular the provision that the parties could not rely on any "arrangement, agreement, representation or understanding **not expressly set out** in the Finance Documents" (the Tribunal's emphasis). Not only was the alleged oral agreement not set out in the Finance Documents, it was not set out at all. It was clear that the Respondent understood the meaning of an entire agreement clause within a contract; that understanding being evidenced in the Retirement Deed created for a former partner of the Firm, which contained no waiver and no variation provisions. Thus the Tribunal found that the importance of the entire agreement clause would not, and did not, escape the Respondent's attention; it would have been, and indeed was clear to the Respondent that the inclusion of the entire agreement clause meant that the agreement was the written agreement; any oral agreement would not survive the LFA. The Tribunal did not accept as credible, the Respondent's evidence that he did not believe that the provisions of the LFA applied to his receipt and use of the funds from Axiom. Accordingly, the Tribunal found as a fact that the entire agreement was contained in the written contract, and that any oral agreement was superseded by that contract. Further, the Tribunal found that the LFA was intended to protect the interests of the investment fund and/or the ultimate investors in the fund as pleaded. The Tribunal was satisfied that the Respondent knew that the Firm had not complied with the terms of the LFA. Indeed, this was admitted, albeit that the Respondent asserted compliance with the oral agreement. Further, he knew that the terms of the LFA were intended to protect the fund and the investors. In those circumstances it was improper for the Firm to accept and use the monies from Axiom. Accordingly the Tribunal found particular 1.1.1 proved beyond reasonable doubt.

83.92 **Particular 1.1.2 – He knew that the LFA pursuant to which the monies were purportedly advanced did not reflect the purpose for which the firm intended to use and/or in fact did use the monies, and that the intended and actual use of the monies was not properly documented by the Respondent and the Investment Manager.**

83.92.1 The Tribunal found (with the exception of a proportion of the August monies) that the LFA did not reflect the purpose for which the Respondent intended to use, and in fact used the monies advanced. It was the Respondent's case that the monies were advanced for practice funding, and to pay outstanding liabilities. The Respondent accepted that clause 2.2 of the LFA defined the purpose as disbursement funding (including the payment of insurance), however, given the oral agreement, which in his submission survived the LFA, he was not bound by its terms. The Respondent relied on the BT report as evidence that Axiom was aware of the intended purpose for the use of the monies advanced. The Tribunal noted that the Respondent submitted that the August monies were advanced as case funding, which the Tribunal found, would, even on the Respondent's case, fall under the terms of the LFA. The Respondent had made a number of references to that funding being "case funding". Further, in his statement of 8 May 2014 (in the bankruptcy proceedings), the Respondent stated that it was orally agreed that the Firm "would sign up to the [LFA] to meet the eventuality that [the Firm] may subsequently seek case specific funding from [Axiom]." To the limited extent that the Respondent accepted and used the August monies for case funding, allegation 1.1.2 was not proved. However, the vast majority of the funding received in August, and the entirety of the funding received in May was not accepted and used for the purposes prescribed by the LFA. Indeed, the Respondent accepted that this was the case, and in relation to both sets of monies, asserted that receipt was not governed by the written agreement. Accordingly, the Tribunal found particular 1.1.2 proved beyond reasonable doubt (excepting those August monies used for case funding).

83.93 **Particular 1.1.3 – He had no intention that the firm would repay the monies as required by the LFA and/or knew or was reckless as to the fact that payment was very unlikely.**

83.93.1 Whilst the Tribunal found that it was unlikely that the Respondent would be able to repay the full amount due to Axiom within 12 months, as was required by the LFA, it could not be sure, beyond reasonable doubt, that the Respondent had no intention of repaying the Fund within the requisite period. The Respondent was reliant, in the main, on the receipt of costs due to the Firm on the Sandon Dock litigation cases. Those matters had concluded in 2010, and the Respondent was expecting payment of those cases to be received prior to the requirement to make payment to Axiom. However, the Tribunal noted that, whilst the Respondent's calculation of what he believed to be due on those matters meant that he would have been able to satisfy the repayment in full, the report from TM Costings placed a lower figure on the value of the cases, such that the receipt of costs would not satisfy the obligation the Respondent would have to the Fund. Further, BT had concluded that the Firm was insolvent. The Respondent, knowing of the Firm's financial difficulties, and with no guaranteed date for payment of the Sandon Dock costs, nevertheless indebted the Firm to the Fund, when he, the Tribunal found, suspected that he would not be in a position to repay the fund within the requisite timescale. In the circumstances, the Tribunal found that the Respondent was reckless as to the repayment, and accordingly found particular 1.1.3 proved beyond reasonable doubt to that extent.

83.94 **Particular 1.1.4 – He misused the funds received by failing to apply them only towards "Eligible Legal Expenses", as defined in and required by the LFA**

83.94.1 It was accepted that the Respondent did not apply the funding only towards "Eligible Legal Expenses" as defined and required by the LFA, it being his case that he was not required to do so as the advance of monies was not covered by the LFA. The Tribunal found, as a fact, that the Respondent had used the monies as described in paragraph 76 above. Indeed that use was not disputed. The Respondent, save for £102,600, had spent the sums advanced to pay creditors and keep the Firm afloat. Given the Tribunal's findings in relation to allegations 1.1.1 – 1.1.3 above, the Tribunal did not accept that the Respondent was entitled, under a separate oral agreement, to apply the funds in the way that he did. As already found, the entire agreement was the written agreement, thus the Respondent was contractually bound to apply the funding received to "Eligible Legal Expenses". In failing to do so, the Tribunal found that the Respondent had improperly used the monies advanced as pleaded and alleged, and accordingly found particular 1.1.4 proved beyond reasonable doubt, with the exception of £102,600.

83.95 **Particular 1.1.5 - Despite being on notice of the serious risk that the investment fund's investment manager in arranging for the monies to be paid to the firm was acting fraudulently and/or in other serious breach of duty to the investment fund and/or the ultimate investors, he failed to carry out any or any sufficient enquiries reasonably to satisfy himself that the payments (and the assumption of a liability to repay a total of £4,948,1803 inclusive of the facilitation fee and insurance premium) did not involve any such conduct by the investment manager.**

83.95.1 The Tribunal found that in all the circumstances, the Respondent knew that Tangerine/DR was not acting as a prudent investment manager, acting in the best interests of his client, would be expected to act. A solicitor with the Respondent's experience should have expected that the written agreement corresponded with the oral agreement. When it did not, the Respondent should have insisted that the oral agreement be recorded in writing, such that it was clear that monies advanced were advanced on the basis of that oral agreement. The extreme informality of the arrangements for receipt of the funding were a serious cause for concern, and should have been so for the Respondent. The fact that Axiom were prepared to arrange a facility of £20m to a Firm that was documented as being insolvent was in and of itself suspicious. That coupled with the fact that the initial application for funding by the Respondent was in the sum of £1.4m, which then increased to £2.1m by the time of the BT report, yet the LFA provided for a facility of £20m, must have struck the Respondent as very odd indeed. The Respondent stated that it was envisaged that the loans would be secured on the Sandon Dock litigation costs; indeed this was said to be an oral term agreed, yet no security was taken out by Axiom. For a solicitor who was well used to obtaining funding, and was fully aware of the financial predicament of the Firm, the failure by the Fund to secure such a large amount must have appeared to the Respondent as suspicious in the extreme. The Respondent should have known, and the Tribunal found that he did know, that the prudent approach to funding to be expected of an investment manager in Tangerine's position was wholly absent. The Respondent was aware of the FF, which he stated he had queried with DR but was "basically told to like it or lump it." Further, the Respondent explained that "we needed the money, we needed the money quickly, and so we reluctantly agreed to it." The Tribunal found that statement to be informative of the Respondent's state of mind at the time. In the investor

presentation, which the Respondent accepted he had read, it was stated that "the Investment Manager makes no fixed charge to the fund and is motivated by a performance fee"; this was clearly wholly inconsistent with the payment of a FF at source, let alone a 50% fee. The Respondent, it was found, ignored the suspicious nature of the FF. The Tribunal determined that the Respondent was aware that the basis upon which the Firm accepted and intended to use the monies was inconsistent with the representations that he knew had been made to investors; that knowledge also arising from the Respondent's reading of the investor presentation. The Respondent knew that Tangerine/DR did not ensure that there was any "careful selection and monitoring" or "ongoing monitoring or tracking" of the cases and their progress, nor did Tangerine/DR undertake any independent assessment (or require the Firm to provide evidence of the same) in relation to the merits of cases. The Tribunal determined that the circumstances outlined above would, and did, put the Respondent on notice of the serious risk that DR/Tangerine, in arranging for monies to be paid to the Firm, was committing some serious breach of duty towards the fund/investors.

83.95.2 The Tribunal did not find that there was any evidence that the Respondent knew that Tangerine had made no proper assessment of the Firm's ability to repay, however, the Respondent had failed to demonstrate the ability to repay the funding within the requisite timeframe. The matters relied upon by the Applicant as indicia of fraud that related to the ATE insurance, the OM's and the SOM's were rejected by the Tribunal. The Respondent had not seen the OM's or SOM's and therefore was not aware of their content. ATE insurance was not taken out on the Sandon Dock matters as the cases were already concluded, and were simply awaiting payment. The Tribunal found, that whilst it would have been prudent for the Respondent to do so, he was under no obligation to obtain and read the OM or SOM's.

83.95.3 The Tribunal found that the Respondent failed to carry out any, or any sufficient enquiries. With the indicia of fraud detailed above, it was incumbent upon the Respondent to satisfy himself that Tangerine/DR was acting within its authority. There was enough publically available information at that time to enable the Respondent to so satisfy himself. The Tribunal did not, however, find that the enquiries suggested by the Applicant in its Rule 5 Statement, such as requesting sight of the agreement between Axiom and Tangerine, were reasonable enquiries to make. The Tribunal found that the Respondent refrained from making enquiries lest he learned something that he would rather not have learned. Accordingly, the Tribunal found particular 1.1.5 proved beyond reasonable doubt.

83.96 **Particular 1.1.6 – He unreasonably risked the firm being a party to transactions which were a fraud on the investment fund and/or of the ultimate investors, or which involved other serious breach of duty by the investment manager towards them (or one of them).**

83.96.1 The Tribunal, having found particular 1.1.5 proved found particular 1.1.6 proved. The Respondent was on notice of the serious risk that DR/Tangerine were acting in serious breach of the duty owed to the Fund/investors. Further, the Respondent was aware that the FF was deducted at source and went to DR/Tangerine, that fee in itself being suspicious due to its size and the incentive it provided to lend recklessly. He was also aware that the oral agreement was wholly inconsistent with the LFA

and with the investor presentation he had seen prior to the BT report and the signing of the LFA. The Respondent did not seek to clarify the position despite knowing that the LFA was written with the protection of the Fund and the investors in mind. The Respondent who, as was found, was on notice of the risk of serious breach of duty by DR, failed to make sufficient enquiries. In those circumstances the Tribunal found beyond reasonable doubt that the Respondent unreasonably risked the Firm being party to transactions that were fraudulent or involved other serious breach of duty. Accordingly, the Tribunal found allegation 1.1.6 proved beyond reasonable doubt.

83.97 **Particular 1.1.7 – In all of the circumstances, as the Respondent well knew or suspected, the transactions pursuant to which the monies were received were dubious, and the monies should not have been accepted or used.**

83.97.1 In light of the Tribunal's findings in relation to particulars 1.1.1 – 1.1.6, the Tribunal found particular 1.1.7 proved beyond reasonable doubt.

83.97.2 The Tribunal found beyond reasonable doubt that the Respondent had failed to behave in a way that maintained the trust the public placed in him as a solicitor and in the provision of legal services. The public would be extremely concerned to know that a solicitor was prepared to sign a contract, ostensibly for the provision of funding for cases, when he had no intention of complying with the terms of that contract, and had intended to use the monies for purposes that were diametrically opposed to the terms of that contract. Further, members of the public would be hugely concerned that a solicitor would ignore clear signs of serious misconduct, as to take account of those signs would run contrary to that solicitors requirements. The Tribunal found that the Respondent had acted without integrity - this was established beyond reasonable doubt on the basis of its findings above. To enter into a written contract which contained terms and conditions that were not intended to be kept from the outset was a matter of serious misconduct.

83.97.3 The Tribunal did not accept that as this was a commercial arrangement this was a matter that fell outside of the Principles by which solicitors should conduct themselves. The Tribunal found beyond reasonable doubt that the Respondent had breached Principles 2 and 6 as alleged, and that Respondent caused or permitted the Firm to accept funding from Axiom in circumstances where it was improper for the Respondent to do so. Accordingly the Tribunal found allegation 1.1 proved beyond reasonable doubt.

83.98 **Dishonesty in relation to allegation 1.1**

83.98.1 As accepted by the parties, the test to be applied in considering dishonesty was that set out in Twinsectra v Yardley and others [2002] UKHL 12, as applied to disciplinary proceedings by Bultitude v Yardley [2004] EWCA Civ 1853 and Bryant v Law Society [2007] EWHC 3043. As per Lord Hoffman at paragraph 27 of Twinsectra:

> "…. there is a standard which combines an objective and a subjective test, and which requires that before there could be a finding of dishonesty it must be established that the (defendant's) conduct was dishonest by the ordinary

> standards of reasonable and honest people and that (he) himself realised that by those standards his conduct was dishonest."

83.98.2 This was the test which had been approved by the courts, and was applied by the Tribunal. The Tribunal noted that there was no suggestion that the Respondent's capacity to distinguish between right and wrong had been impaired by mental or any other illness.

83.98.3 In respect of the subjective element of dishonesty, Mr Dutton submitted that this could be satisfied not only where actual awareness of the fact that the conduct was dishonest was proved. Other types of knowledge such as wilfully shutting one's eyes to the obvious, or wilfully and recklessly failing to make such enquiries as an honest and reasonable solicitor would make would also suffice to satisfy the subjective limb of the test. As per Lord Nicholls in Royal Brunei Airlines v Tan [1995] 2 AC 378 at 389G:

> "Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless."

83.98.4 Further, it was submitted that a solicitor, who acted in a dubious transaction knowing or suspecting it was dishonest or involved some other improper conduct, acted without integrity, recklessly and dishonestly.

83.98.5 The Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would find that it was dishonest for a solicitor to accept and use monies in circumstances where it was improper for him to do so. Further, reasonable and honest people, applying ordinary standards, would consider that it was dishonest for a solicitor to sign a misleading document that was inconsistent with the true terms; that contained promises that the solicitor did not intend to keep; and was therefore a false and misleading record. Accordingly, the objective limb of the Twinsectra test was satisfied.

83.98.6 The Respondent submitted that the LFA did not govern the advance of monies from Axiom; those advances were instead governed by an oral agreement made with DR. The Tribunal did not accept this and found, for the reasons set out in allegation 1.1 above, that the Respondent knew that the LFA was the entire agreement. Whilst the Tribunal had no doubt that the Respondent was seeking practice funding, and was led to believe by DR that Axiom could provide practice funding (that assertion being supported by the BT report), the Tribunal also had no doubt that once the Respondent read the LFA, he knew that any funding advanced by Axiom would not be practice funding, but would be advanced for the express purpose set out in the LFA. That position was reinforced by the very clear wording of the entire agreement clause, which the Respondent accepted that he had read and understood.

83.98.7 Indeed, the Tribunal noted that the Respondent, in his evidence, suggested that some of the funding had been advanced under the terms of the LFA. The Respondent referred to the August monies as "case funding" and further, during his evidence in chief, stated that the mortgage mis-selling cases "were dealt with, **and eligible legal expenses, according to the agreement,** were paid in terms of the referral fees for

those" (the Tribunal's emphasis). In correspondence from the Respondent to both K&L Gates, and Grant Thornton dated 10 April 2013, the Respondent differentiated between the May monies, which in both letters, the Respondent asserted was advanced on the basis of recommendations made in the BT report (namely as practice funding), and the August monies, which were borrowed to fund the acquisition of mortgage mis-selling cases. Further, as noted above, the Respondent had referred in both his witness statement (dated 8 January 2016), and his evidence to having arranged for a significant repayment to be made to Axiom "before it would have fallen due on the terms of the LFA". Given the apparent difference in the Respondent's evidence as to the advance of the monies, the Tribunal considered the position in relation to the Respondent's honesty separately as regards the May and the August monies.

The August Monies

83.98.8 The Tribunal considered the evidence in the correspondence, the Respondent's witness statement, and his oral evidence. For the reasons given above, all the evidence suggested, and indeed the Tribunal found, that the Respondent expressly stated that the August monies were advanced under the LFA. In the circumstances, the Tribunal found that the Respondent knowingly and consciously failed to comply with the terms of the LFA, save for any of the August monies that were used to pay Eligible Legal Expenses. In light of those findings, the Tribunal had no hesitation in finding that the Respondent knew that his conduct was dishonest according to the ordinary standards of reasonable and honest people. Accordingly the subjective element of the Twinsectra test was satisfied and the Tribunal found beyond reasonable doubt the Respondent's conduct was dishonest as regards the August monies.

The May Monies

83.98.9 The Tribunal considered the reasonableness of the Respondent's apparent reliance on the representations of DR and the content of the BT report. The Tribunal determined that the Respondent, an experienced solicitor, knew that the BT report could not be the agreement. Indeed, under cross-examination, the Respondent accepted that the BT report, whilst it may have stated the intended use of the monies, did not contain the terms of the agreement. The Respondent knew, and accepted, that he would not be advanced any funding unless he signed the LFA. The Respondent in evidence stated that "we did not know what the [LFA] would say but, obviously, to take advantage of the funding we would have to become a panel member." Further, he confirmed that he knew that the purpose of signing the agreement was to obtain the funding. The Tribunal determined that, if, as was contended, the Respondent believed that the oral agreement covered the arrangement he was entering with Axiom, there would have been no need for him to have signed an agreement that was diametrically opposed to his stated purpose in borrowing monies from the Fund. At the time that he read the entire agreement clause contained within the LFA, the Respondent knew that, should he sign the agreement, he would be legally bound by its terms; it was simply incredible that the Respondent did not know this to be the case. The Tribunal determined that when he read and signed the LFA, had the Respondent been acting honestly, he would have made further enquiries, or ensured that the oral agreement was properly documented such

that the fundamental clauses of the LFA were varied to enable him to use the funding as practice funding. The Respondent, however, was driven by the desperation of the Firm's financial situation, such that he ignored the terms of the LFA and proceeded to accept and use the funds in circumstances where it was improper for him to do so. As the Respondent stated in his evidence "we needed the money, we needed the money quickly …" The Tribunal found that the Respondent had deliberately closed his eyes and ears to the obvious and had deliberately not asked questions, lest he discovered something that he would rather not have known. The Respondent then accepted and used Axiom monies contrary to the LFA. The Tribunal determined that in behaving in this way, the Respondent had behaved dishonestly, and knew that his actions and failure to make reasonable enquiries were dishonest by the ordinary standards of reasonable and honest people. Accordingly the Tribunal found that the subjective test was satisfied and dishonesty was proved beyond reasonable doubt, as regards the May monies.

84. **Allegation 1.2 - The Respondent failed to pay the monies identified in allegation 1.1 into the Firm's client account or, if he wrongly but honestly believed that the funds received constituted office money, he failed to pay the said monies into an office account whose sole purpose was to hold the monies pending their use for an authorised purpose contrary to Principles 2, 6, 8 and 10 of the Principles and to Rules 1.2 (a), 1.2 (b) and 14.1 of the SRA Accounts Rules 2011 ("SAR").**

Applicant's Evidence & Submissions

84.1 The Applicant submitted that the Axiom monies were provided for the purposes specified in clause 2.2 of the LFA, i.e. the payment of Eligible Legal Expenses, and could not be used for any other purpose. The monies were not at the free disposal of the Firm. Under the terms of the LFA, the monies should have been paid into client account, as per clause 4.4 of the LFA, which provided that:

> "If the conditions of this Agreement have been met, the Lender shall make each Loan available to the Panel Firm by payment to the relevant Client Account by monthly drawdown on the relevant Utilisation Date subject always to the capital availability of the Lender",

84.2 Clause 4.2(a)(iii) required the Respondent to specify the client account into which funds were to be paid when submitting a utilisation request for funding.

84.3 To the extent that the monies were not used for the specified purposes, it was submitted that they were subject to a resulting trust in favour of the Fund.

84.4 The position of the contract was reinforced by the SAR. Rule 12.2(a) and (c) of the SAR provided that:

> "12.2 Client money includes money held or received:
> (a) as trustee
> (c) for payment of unpaid professional disbursements;"

84.5 Rule 14.1 required that client monies be paid without delay into client account; Rules 1.2(a) and 1.2(b) required that other people's money be kept separately from money belonging to the Respondent or the Firm, and that such money should be kept safely in a bank or building society account identifiable as a client account.

84.6 It was common ground that monies received from the Axiom Fund were paid into office account, and were not applied solely for the purposes of funding disbursements. The Respondent was aware of the SAR, and his obligations in relation to client money.

84.7 Alternatively, if the Respondent wrongly but honestly believed that the monies were not client monies, then he should have:

- paid them into an office bank account whose sole purpose was to receive the monies, where they would not be mixed with other office monies (and/or consequently utilised for general running expenses or dissipated by the account being in overdraft); and

- kept proper records of the monies received from the Axiom Funds to ensure that the funding was expended for an authorised purpose and/or that it was repaid in accordance with the Litigation Funding Agreement upon the conclusion of the funded cases and/or the recovery of costs.

84.8 The Respondent did neither of these things, and thus his conduct amounted to breaches of Principle 2, integrity; Principle 6, public trust; Principle 8, sound financial and risk management; and Principle 10, protecting client money.

84.9 Furthermore, Mr Dutton submitted that the Respondent's conduct was dishonest as:

- Any honest solicitor would not pay funds specified for a specific purpose into an office account and use such funds for purposes not reflected in the agreement pursuant to which the funds were advanced; and

- The Respondent knew that the funds had to be paid into a client account, at the latest, after he read and signed the LFA.

<u>Respondent's Evidence & Submissions</u>

84.10 The Respondent accepted that the monies were not paid into client account. He had agreed the purpose for the use of the monies with DR in the oral agreement on 9 February 2012, that purpose being for practice funding. In those circumstances, the monies provided were not client but office monies, and were therefore rightfully paid into the office account. The funds advanced were on the oral terms agreed, and were outside of the terms of the LFA. The oral agreement survived the LFA, and thus survived the entire agreement clause; the oral agreement prevailed over any written agreement.

84.11 The Respondent submitted that he placed reliance on the BT report, which detailed the ways in which it was intended that the money would be used. It was clear from the report that the Respondent intended to use the monies to pay a number of outstanding debts for the Firm, including the payment of sums due to HMRC. In his oral evidence, the Respondent explained that given the funding provided was for practice funding, "it would have been completely inappropriate for [the monies] to go into client account ...", and that "… as practice funding … there would be no reason to pay that into client account …"

84.12 As to the suggestion that the funds should have been held in a separate office account designated for the purpose, the Respondent could see no basis in conduct for that suggestion.

84.13 The Respondent denied that he had acted contrary to any or all of Principles 2, 6, 8 and 10, and further denied that he had breached Rules 1.2(a), 1.2(b) and 14.1 of the SAR. Further, he denied that he had acted dishonestly or recklessly.

The Tribunal's Findings

84.14 The Respondent's case was that there was a separate oral agreement which prevailed over the written contract, such that the monies were practice funding and consequently could be paid into office account. The Respondent had differentiated between the May monies, which were advanced on the basis of practice funding, and the August monies. In his evidence, the Respondent confirmed that the August monies were predicated on mortgage mis-selling cases. When asked if that was case funding, the Respondent replied "It was in that case, yes." Mr Dutton put to the Respondent that on his own evidence, those monies should have been paid into client account, as it was not practice funding but case funding. The Respondent stated that the monies were also to be utilised for running the cases and that "we were told that it was going into office account." Mr Dutton stated:

> "But you see, if you were drawing a distinction between your own practice funding and case funding, at least with respect to [the August monies], you are getting it for cases. The thought must have crossed your mind that you were bound to pay this into client account".

84.15 The Respondent explained:

> "I don't think it did at that time. That wasn't anything that was ever mentioned to us. We relied solely on what [DR] said to us."

84.16 Mr Dutton continued:

> "Well it was mentioned to you, wasn't it? It was actually in the written agreement that the money had to go into client account."

84.17 The Respondent replied:

> "It was in the written agreement, yes."

84.18 The Tribunal had already found that the terms of the LFA were for the protection of the Fund/investors. It was clear that investors had been told that monies would be allocated to cases, paid into client account, and used to pay disbursements. Further, they were told that both ATE and FGI insurance would be in place in relation to each claim; their investment was protected both by the regulation to which solicitors are subject, and insurance in the event that a claim was not successful. The Respondent knew this prior to signing the LFA. Having found that the entire agreement was the written agreement, the Tribunal found as a fact, that both the May and August monies were client money and thus subject to the SAR. The monies had been advanced by Axiom under the terms of the LFA; the purpose for which the monies were provided was disbursement funding. As such it was client monies, and thus should have been paid into client account. It having been accepted by the Respondent that the money was not paid into client account, the Tribunal found proved, beyond reasonable doubt, that the Respondent had breached the SAR as pleaded and alleged.

84.19 The Respondent had used a vast amount of client monies for his own benefit, and that of the Firm, in circumstances when he was fully aware of his professional obligations. The Tribunal found that the Respondent's use of the monies was improper. This clearly demonstrated beyond reasonable doubt that the Respondent had acted without integrity in breach of Principle 2. His failure to pay the money into the Firm's client account meant that he had caused that money to be unprotected; less than $1/10^{th}$ of the amount due was repaid to the Axiom Fund. This, the Tribunal found beyond reasonable doubt, was clear evidence that the Respondent had failed to protect client money, in breach of Principle 10. It followed, as a matter of course, and the Tribunal found beyond reasonable doubt, that in failing to protect client monies, and using client monies without integrity, the Respondent had failed to run his business in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8. On his own case, the Respondent failed to record the terms of the alleged oral contract, those terms being at variance with the written terms. Solicitors, running a practice with proper governance, would not enter into a contract of such importance without ensuring that all terms were clearly and properly documented. Members of the public would be alarmed to learn that a solicitor had used vast amounts of client money, for his own purposes, even where that was premised on a mistaken belief as to the purpose pursuant to which those monies were provided; solicitors should not be mistaken as to what did or did not constitute client money. In improperly using client money, the Respondent had behaved in a way that diminished the trust the public placed in him as a solicitor and the provision of legal services in breach of Principle 6. Thus, the Tribunal found that the Respondent had breached the Principles as pleaded and alleged.

84.20 Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt on the facts, evidence and the submissions

84.21 **Dishonesty in relation to allegation 1.2**

84.21.1 For the reasons detailed in allegation 1.1 above, the Tribunal found that the Respondent knew that the written agreement was the entire agreement. Applying the Twinsectra test, the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would find that solicitors who used

client money for their own purposes had acted dishonestly, and therefore the objective test was satisfied.

84.21.2 The Respondent knew of his obligations in relation to client money under the SAR. The Respondent had also clearly read, and understood the impact of the entire agreement clause contained within the LFA. Despite this, he had spent a substantial amount of client money. On his own evidence, the Respondent had accepted that the August monies were advanced to him for case funding. The Tribunal found beyond reasonable doubt that the Respondent knew that those monies were advanced under the strict terms of the LFA; his use of those monies was inconsistent with the terms of that agreement. The Respondent's assertion that the August monies were advanced under the terms of an oral agreement was, the Tribunal found, untenable and unsustainable. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that his actions, in failing to pay the August monies into client account were dishonest, and would be deemed to be dishonest by the ordinary standards of reasonable and honest people. Accordingly the Tribunal found the subjective test satisfied and that dishonesty was proven beyond reasonable doubt as regards the August monies.

84.21.3 In relation to the May monies, the Tribunal found that the Respondent deliberately failed to ask questions lest he learned something that he would rather not know; the Respondent had turned a blind eye, as it suited his purposes to do so. The Respondent, on his own evidence, was desperate for funding. His Firm was in serious financial difficulty. The Respondent had read and understood the terms of the LFA. As the Tribunal had already found, the Respondent's assertion of reliance on the BT report and the representations of DR were unsustainable in light of the express terms of the LFA. As detailed above, the Tribunal accepted that the Respondent required practice funding, and the BT report was prepared on that basis. However, at the time of signing the LFA, which was clear in terms of the purpose of the funding and that the written agreement was the entire agreement, the Respondent knew that monies being advanced by Axiom were not advanced to fund the practice. Further, the Respondent accepted that in order to receive any funding from Axiom, he was required to sign the LFA. As above, the Tribunal determined that when he read and signed the LFA, had the Respondent been acting honestly, he would have made further enquiries, or ensured that the oral agreement was properly documented such that the fundamental clauses of the LFA were varied to enable him to use the funding as practice funding. The Respondent, however, was driven by the desperation of the Firm's financial situation, such that he deliberately ignored the terms of the LFA and proceeded to accept funds and spend them in the way which was required for the continuance of his practice, but was wholly inconsistent with the terms on which the funding had been advanced. The Tribunal found that in failing to make such enquiries as a reasonable and honest solicitor would make, the Respondent had been dishonest, and knew that his actions and inaction was dishonest by the ordinary standards of reasonable and honest people. Accordingly the Tribunal found that the subjective test was satisfied and dishonesty was proved beyond reasonable doubt as regards the May monies.

85. **Allegation 1.3 - The Respondent misappropriated or caused or permitted the misappropriation of £3,150,341.56 (or thereabouts), being the money received from the investment fund. The Respondent thereby acted without integrity, in**

breach of Principle 2 of the Principles, and behaved in a way that did not maintain the trust the public places in him or in the provision of legal services in breach of Principle 6 of the Principles.

Applicant's Submissions

85.1 Mr Dutton submitted that the Respondent borrowed £3.1m from the Axiom Fund in dubious circumstances, when he knew he was unable to repay the amount in accordance with the terms of the LFA, or indeed with the terms of his alleged oral agreement. On either case, he was bound to repay the net amount together with interest and the FF within 12 months. The Respondent made a small repayment of £308,591.14. The Respondent used the money obtained for purposes other than those permitted by the LFA, and in those circumstances, had misappropriated that money.

Respondent's Submissions

85.2 The Respondent denied that he had misappropriated any funds as alleged or at all. The funds, it was submitted, were used in accordance with the purposes for which they had been released to the Firm.

The Tribunal's Findings

85.3 The Tribunal had already found, at allegations 1.1 and 1.2 that:

- the entire agreement was contained in the LFA signed by the Respondent;
- any oral agreement was superseded by the LFA;
- the Respondent knew that the entire agreement was contained in the LFA;
- the monies received were client monies and should have been paid into client account:
- the Respondent knew that the monies received were client monies and should have been paid into client account;
- the Respondent had used a vast amount of client monies for his own benefit and that of the Firm; and
- in failing to apply the monies to "Eligible Legal Expenses", the Respondent's use of the monies was improper.

85.4 Given the Tribunal's findings in relation to allegations 1.1 and 1.2, it followed that in using client monies in the way that he did, the Respondent had misappropriated or caused or permitted the misappropriation of the Axiom funding received as pleaded and alleged. For the reasons set out in the Tribunal's findings in relation to allegations 1.1 and 1.2 above, the Tribunal found beyond reasonable doubt that the Respondent had acted without integrity in breach of Principle 2, and had failed to maintain the trust the public placed in him as a solicitor and in the provision of legal services in breach of Principle 6. Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt on the evidence, facts and submissions.

85.5 **Dishonesty in relation to allegation 1.3**

85.5.1 Applying the Twinsectra test, the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would find that solicitors who misappropriated client money for their own purposes had acted dishonestly, and therefore the objective test was satisfied.

August Monies

85.5.2 The Tribunal had found, at allegation 1.2 above that the Respondent knew that the August monies were advanced under the terms of the LFA; indeed that was the Respondent's evidence. It followed from the Tribunal's findings that the Respondent knew that the August monies were client monies and should have been paid into client account, and that in using those monies he had done so improperly. The Tribunal had also found that the Respondent, in using the monies in the way that he did, had knowingly misappropriated the monies received. The Tribunal determined that of the August monies received, the Respondent had utilised £102,600 in accordance with the terms of the LFA, and to that extent, those monies were properly used and not misappropriated. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that his actions, in misappropriating the remainder of the August monies (which were client monies) would be deemed to be dishonest by the ordinary standards of reasonable and honest people, and he knew his actions were dishonest. Accordingly, the Tribunal found the subjective test was satisfied in respect of the August monies (save for £102,600) and that dishonesty was proven beyond reasonable doubt.

May Monies

85.5.3 The Tribunal repeated its findings in relation to allegations 1.1 and 1.2 above. In particular, the Respondent had failed to ask questions and turned a blind eye as he was desperate for funding. The Respondent was aware, and it was found, that the entire agreement was the LFA, and that he would only receive funding if he signed the LFA. The Respondent's financial desperation drove him to deliberately ignore the terms of the LFA, such that he could spend the money received so as to keep his Firm afloat; the Respondent disregarded in its entirety, the purpose for which the funding was actually advanced. The Tribunal found that in failing to make such enquiries as a reasonable and honest solicitor would make, the Respondent had been dishonest, and knew that his action or inaction would be so deemed. Accordingly, the Tribunal found the subjective test was satisfied in respect of the May monies, and dishonesty was proved beyond reasonable doubt.

86. **Allegation 1.4 - The Respondent on 14th October 2011 transferred £32,000 from client to office account, which was a transfer of unallocated funds. The Respondent thereby misused client money and acted without integrity in breach of Principle 2 of the SRA Principles 2011, and behaved in a way that did not maintain the trust placed in him and in the provision of legal services in breach of Principle 6. By transferring the said sum of £32,000 from client to office account as aforesaid the Respondent also acted in breach of Rule 20 of the SAR.**
Allegation 1.5 - The Respondent on 15th November 2011 transferred £40,000 from client account to office account such transfer being of unallocated funds. The Respondent thereby misused client monies and acted without integrity, in breach of Principle 2 of the Principles and behaved in a way that did not

maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles. By reason of the matters aforesaid the Respondent also acted in breach of Rule 20 of the SAR.

Applicant's Evidence and Submissions

86.1 Mr Dutton submitted that the core issue for the Tribunal to decide in relation to allegations 1.4 and 1.5, was whether the Respondent, when he caused the transfers to be made from client account to office account, had acted dishonestly and/or recklessly and acted without integrity.

86.2 Allegations 1.4 and 1.5 related to two removals from client account in mid-October, and mid-November 2011, at a time when the Respondent's financial position was precarious; both the Respondent and his Firm were in acute financial difficulty. HMRC had served a statutory demand on 23 August 2011, and the Firm had not yet obtained any funding.

86.3 On 14 October 2011 and 15 November 2011, the sums of £32,000 and £40,000 respectively were transferred from the client account to the office account of the Firm on the Respondent's instruction. Bank statements for the dates in question indicated that personal cheques were issued by the Respondent in the sums of £32,000 and £40,000. These two personal cheques were paid into the client bank account of the Firm.

86.4 The Respondent explained to the SRA that both personal cheques were raised in order to assist the Firm to meet the October and November payroll but were erroneously paid into the client account. For this reason, the transfers from client to office account were made.

86.5 At the time the payment was made the Respondent had insufficient funds in his own account and thus the cheques were each dishonoured; both cheques issued by the Respondent bounced. In fact, the Respondent's account was overdrawn throughout the entire period from 31 August 2011 to 24 November 2011.

86.6 In response to further questions from the SRA seeking to establish that the Respondent, at the time of issuing the cheques, had sufficient funds in his personal account to cover the £32,000 and £40,000 cheques, the Respondent explained that in respect of the £32,000 cheque he had intended to "transfer sufficient funds to that account to ensure [the cheque] would be met on presentation". He intended to make the transfer into his personal account as follows:

- A second client account of the Firm had a balance of £42,900.30, which contained office funds which had to be "allocated against specific disbursements".

- He intended to carry out the relevant reconciliations and transfer what he considered to be office funds from that client account into the office account.

- He was then going to transfer the necessary funds from the office account into his personal account for the purpose of funding the £32,000 cheque he drew on his

personal account and which he intended to pay into the Firm's office account before that cheque cleared.

86.7 However, the Respondent explained that he "did not get that done in time and therefore my cheque was not met".

86.8 As to the £40,000 which was similarly paid into the Firm's client account and dishonoured in November 2011, the Respondent simply explained that it was paid into the client account in error. No further explanation had been supplied either in his Answer or his witness statement. In his evidence the Respondent explained that the Firm was due to receive some temporary funding in mid-November. The funding would have been paid to him personally, "and that's the basis on which I issued the cheque."

86.9 The Respondent admitted that monies were withdrawn from a client account in breach of Rule 20 of the SAR, and also accepted that withdrawing money from a client account without any proper basis for such a withdrawal constituted a breach of Principle 6 of the Principles. He denied, however, that he acted without integrity in breach of Principle 2 or dishonestly.

86.10 The SRA contended that the facts above illustrated that the Respondent's conduct in respect of the withdrawal of funds from his Firm's client account in the circumstances when he knew that this would create a shortfall in the client account was indeed in breach of Principle 2 and dishonest, and that the account given by the Respondent was not credible, nor was it a defence to the allegation of dishonesty.

86.11 It was submitted that when drawing funds from the client account, there was in fact, no proper purpose for the use of such funds in the office account, as there were no monies which were held in the client account which could have been considered to be office funds.

86.12 Further, the Respondent did not explain why he felt it necessary to draw two personal cheques in order to give the appearance of providing funds to his Firm's client account. Even if these cheques were paid into the client account by some inexplicable mistake, which happened twice, and it was submitted "had the ring of Lady Bracknell about it", the Respondent did not explain why any money from his personal account had to be paid into the office account at all, if all along he was planning to transfer sufficient funds from the office account into his personal account, in order to honour the cheque, which, on his case, had it been paid in correctly, would have been paid into the office account. His account, it was submitted, simply did not make sense, and his explanation was not accepted.

86.13 In the circumstances, it was submitted that the Respondent was doing something which comprised serious and dishonest misconduct. He was causing money to be withdrawn, which was unallocated money, from client account to office account, because he and the Firm were in financial difficulty. He was purporting to cover the withdrawal with personal cheques which he knew or must have suspected would bounce because his personal account was overdrawn throughout that period. The result was that the Respondent engineered the removal of £72,000 from client to office account.

86.14 Mr Dutton submitted that the Tribunal was compelled to conclude that the real reason for the drawing of the personal cheques was that the Respondent was seeking to provide cover for the withdrawal of £72,000 from his client account, so as to make payroll payments with client account monies in October and November 2011. It was submitted that the Respondent's conduct was not that of an honest solicitor; he had acted dishonestly by withdrawing funds from a client account without any proper justification for it.

The Respondent's Evidence and Submissions

86.15 The Respondent accepted, regretfully, that in transferring £32,000 and £40,000 from client to office account he had breached the SAR and Principle 6 as pleaded and alleged. At that time, the Firm needed funds to pay its creditors and meet payroll. In October 2011, he issued a personal cheque for £32,000 to be paid into office account. He intended to reconcile a second client account which held funds of £42,900.30 which was due to the Firm. He was unaware that the cheque had been wrongly placed into client account. When the error was realised, a transfer was made from client account back to office account to correct it.

86.16 A further cheque for £40,000 was provided in November 2011. Unfortunately the Respondent did not "know how it happened but the same mistake happened again." The second mistake was picked up immediately by the Respondent and reversed within 7 days. The Respondent denied any impropriety, and explained that "there have been no similar incidents … since these errors occurred ..."

86.17 In his evidence the Respondent explained that he believed, on both occasions, that the funds were going to come into office account, and then into his account, which would have covered the cheques. He denied Mr Dutton's suggestion that what he was doing was "issuing … a worthless personal cheque, presenting it to client account so as to make it look as if there was a credit coming into client account, which enables you to get funds out and into your office account."

86.18 The Respondent accepted that the only reason that staff were able to be paid in both October and November 2011 was because of the transfers from client account.

86.19 Mr Dutton stated that "The fact is the only reason why the staff could be paid in October 2011 was because the office account received a transfer of £32,000-odd from the client account. That, I think, is fair," to which the Respondent replied "Yes, that's a fair position." Mr Dutton continued: "And the only reason why the staff could be paid in the middle of November 2011 was because the office account received a payment of £40,000-odd from the client account?", to which the Respondent replied "Yes".

86.20 The Respondent accepted that where a solicitor deliberately moved money out of client account into office account in breach of the rules, such conduct would be dishonest. The Respondent denied that he had deliberately breached the Accounts Rules.

The Tribunal's Findings

86.21 The Tribunal examined the sequence of events, and the Respondent's explanations for both transfers in great detail. The Tribunal were sure, beyond reasonable doubt, that the Respondent knew that his personal account was overdrawn at the time that he had written both cheques; indeed the Respondent had accepted this in his oral evidence.

86.22 The Respondent, in his evidence, explained that the money that was to be reconciled and transferred was in a No 2 client account, which was different to the general client account from which the money was actually transferred. Further he knew that no reconciliation of the No 2 client account monies had taken place, before the transfer from the general client account was made. He explained that due to the pressure that the Firm was under at the time, it had not reconciled those monies, despite the monies being available to transfer across; the reconciliation of those monies was a lengthy operation, which had not taken place. He also knew that he was not in the position to pay staff from his personal funds. The Tribunal found, on the Respondent's own evidence, that he knew that as there had been no transfer from No2 client account to office account, general client monies were being used to pay staff salaries, and he could not properly transfer the monies that he did.

86.23 In relation to the November transfer, the Respondent explained that he was anticipating the payment in of monies from a funding company that was due to arrive at around the time the staff salaries were to be paid. He again accepted that he wrote the cheque, drawn on his personal account, at a time when he knew that his account was overdrawn. He again explained that when the funding came in, he would use that to credit his own account, which in turn would then honour the cheque that he had written. The Respondent explained that the money would have been credited to office account, which he would then have taken as drawings, thus providing the funds in his personal account to honour the cheque he had written.

86.24 The Tribunal found the Respondent's explanations to be preposterous. In so far as his explanations made any sense, they were rejected in their entirety. The Tribunal simply did not accept that the Respondent, on both occasions, was expecting to receive money into the office account (out of which he would pay staff salaries), which he would then transfer to his own account, to ensure that the cheques that he had intended be paid into office account, would be honoured. Effectively, the Respondent was asking the Tribunal to accept that office money was going to be used to clear cheques that would become office money. The Tribunal found that the sequence of events that the Respondent stated he intended should have taken place were absurd and completely unnecessary. It was clear, and the Tribunal found beyond reasonable doubt that the Respondent had withdrawn money from client account in circumstances where it was not properly required in breach of Rule 20 of the SAR. That the Respondent had acted without integrity and in breach of his duty to maintain the trust the public placed in him as a solicitor and in the provision of legal services was clear on the facts, and the Tribunal found allegations 1.4 and 1.5 proved beyond reasonable doubt as pleaded and alleged.

86.25 **Dishonesty**

86.25.1 Applying the Twinsectra test the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor, who deliberately wrote cheques, that he knew were not going to be honoured, so as to cover improper withdrawals from client account, had acted dishonestly.

86.25.2 The Tribunal as detailed above, had found the explanation provided by the Respondent to be without credibility. Following the explanation for the October transfer, the Respondent was suggesting that he wrote a cheque, to cover staff salaries, (which was mistakenly paid into client account), knowing that his personal account was overdrawn. He was relying on a reconciliation of his No 2 client account, which he stated contained office monies. Once that reconciliation had taken place, the monies would be transferred into office account, and then to him as drawings, to cover the cheque that he had placed into office account.

86.25.3 This, the Tribunal found, was nonsensical. The Tribunal simply did not accept that he was going to credit the office account, using funds from his personal account which would be obtained from office account. If that were the case, there would be no need for him to have written the cheque; it was pointless to take money from an account to repay to the same account. If the monies contained in the No. 2 client account were properly reconciled and then paid into the office account, there would be no need for him to then draw a cheque on his own account.

86.25.4 Mr Dutton stated:

> "I am putting to you that you knew that monies were transferred from your general client account, which was not holding [the monies to be reconciled] to your office account?"

86.25.5 The Respondent replied:

> "I knew it was, that it was a breach of the rules, and it's one that I have regretted."

86.25.6 When it was put to the Respondent that his conduct in this regard was dishonest, the Respondent stated:

> "I don't believe that I was dishonest … and I'm not going to accept that,"

86.25.7 Whilst the Respondent accepted the general proposition that deliberately breaching the SAR was dishonest, he stated that "It wasn't in this particular circumstance."

86.25.8 The Tribunal determined that it was clear that the Respondent did not intend to steal client monies, nevertheless, it was also clear that he had intentionally and dishonestly borrowed client money so as to pay his staff salaries. The Respondent had accepted that, but for the transfers, salaries would not have been paid. He accepted that he knew about the transfers at the time, and that he knew that he did not have sufficient monies in his personal account to honour the cheques he had written. He also accepted that he knew at the time that the transfers were in breach of the SAR. He had accepted in his evidence that a solicitor would be dishonest in

circumstances where he deliberately moved money out of client account into office account in breach of the SAR. This, the Tribunal found beyond reasonable doubt, was exactly what the Respondent had done. Whilst the money had been replaced by the Respondent, this did not absolve him of his dishonest conduct in knowingly utilising client monies, which he knew to be sacrosanct, for the benefit of his practice. Accordingly the subjective Twinsectra test was satisfied, and the Tribunal found beyond reasonable doubt that the Respondent's conduct had been dishonest in relation to allegations 1.4 and 1.5 as pleaded and alleged.

Previous Disciplinary Matters

87. The Respondent had appeared before the Tribunal on two previous occasions. In case No. 8889/2003, the Respondent was fined £2,500 and was ordered to pay costs in the sum of £2,000 together with 1/7th of the costs of the Investigation Accountant of the Law Society.

88. In case No. 9721/2007 the Respondent was fined £15,000 and ordered to pay the costs of and incidental to the application and enquiry to be subject to a detailed assessment.

Mitigation

89. The Respondent did not feel able to advance any mitigation or make any submissions in relation to exceptional circumstances until such time as he had seen the Tribunal's reasons, particularly in relation to its findings of dishonesty. He applied for the proceedings to be stayed until such time as the Tribunal's reasons had been produced, at which point he would be able to consider whether or not to appeal. If the Tribunal were not prepared to expedite the provision of its reasons, the Respondent applied for any strike off to be suspended for a minimum of 14 days to enable him to make proper arrangements for the protection of the Firm's clients, practice and staff.

90. The Respondent submitted that all of his actions in the past had been motivated not by personal gain, but always to protect the practice, clients and staff. He had a salaried partner and he was in discussions with a view to disposing of the business. The Respondent stated that there was no risk to clients given the undertakings he had given to the SRA at the beginning of 2015.

91. Mr Dutton submitted that the Tribunal had power under Section 47(2) of the Solicitors Act 1974 to make the order effective from a specific date; he made no submissions as to whether the Tribunal ought to suspend any order it made to a future date.

92. As to his asking for time to establish whether there were exceptional reasons as to why he should not be struck off, it was submitted that the Respondent knew the case against him, knew the allegations and the factual background in detail. It was unusual in the circumstances to have to wait to see the Tribunal's reasons to ascertain from those whether exceptional circumstances could be advanced. There was nothing, it was submitted, within the factual framework of this matter which could conceivably make this an exceptional case, such that a strike off was not the appropriate sanction.

Sanction

93. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition-December 2015). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

94. The Tribunal found that the Respondent was completely culpable for his conduct. His motivation was to keep the Firm in business, and to pay off his practice and personal debts. The Respondent's actions were clearly planned. Over £3m pounds was drawn down and misused by the Firm. Including the FF and interest, the Axiom Fund lost in excess of £4.5m. As at the date of the hearing, only a small proportion of the monies owed had been repaid to Axiom. Substantial harm had been caused to the Fund and its investors, as well as to the reputation of the profession. He had signed a contract which he knew from the outset contained terms for the protection of the investors and their investments, with which he did not intend to comply. Further, the Respondent had used client monies to pay staff salaries. Whilst the Tribunal accepted that the Respondent intended to, and did, replace those improperly used monies, it did not detract from his misconduct in using client monies in that way. Members of the public would be extremely concerned to learn of the Respondent's conduct. The Respondent was a very experienced solicitor, and the extent of the harm caused by his conduct would have been, and was, clear to him.

95. The Respondent's conduct was aggravated by his proven dishonesty, which was deliberate, calculated and repeated, and was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

96. The Respondent's misconduct was further aggravated by its continuance over a significant period of time. His dishonesty was not a 'moment of madness' or confined to a single set of events. He had acted in breach of trust by accepting Axiom funding which he then used improperly. Further, he had improperly withdrawn money from the Firm's client account in complete disregard of the regulations put in place for the protection of client money. The Respondent had sought to conceal his wrongdoing by placing cheques in client account (that he knew would not be honoured), to give the impression that client monies had not been improperly withdrawn. The Respondent had shown very little insight into his misconduct. He had accepted the SAR breaches and the breach of Principle 6 in relation to allegations 1.4 and 1.5; however he had maintained throughout that he had acted with integrity and honesty for all matters. Whilst the Respondent had appeared at the Tribunal on two previous occasions, the Tribunal did not take those matters into account when considering sanction, as they were of a dissimilar nature.

97. The Tribunal, as detailed above, accepted that the Respondent, in his discussions with DR, had been led to believe that he could use the funds as practice funding, however such belief was unsustainable once he had seen and signed the LFA. The Tribunal also noted that the Respondent replaced the improperly taken funds from client account fairly promptly. The Respondent had co-operated with the investigation and engaged with the proceedings throughout.

98. The Tribunal had regard to the cases of Bolton v Law Society [1994] 1 WLR 512 CA, Bultitude v Law Society [2004] EWCA Civ 1853 and SRA v Sharma [2010] EWHC 2022. It was clear from the case law that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances. The Tribunal had found dishonesty proved multiple times. The Tribunal had regard to the character references submitted on his behalf. The Respondent's misconduct was so serious that a Reprimand, Fine, Restriction Order or Suspension would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by him. His misconduct was at the highest level. The Respondent did not submit, and the Tribunal did not find, any exceptional circumstances in this case. Further, the Tribunal did not consider it appropriate to stay the proceedings in order for the Respondent, having considered the Tribunal's reasons, to then decide whether to appeal or advance exceptional circumstances. The only appropriate and proportionate sanction, in order to protect the public, and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll. The protection of the public and of the reputation of the profession demanded nothing less.

99. The Tribunal considered the Respondent's application for the sanction to be suspended. The Tribunal having determined that the only appropriate sanction was the immediate removal of the Respondent from practice, further determined that any suspension of its sanction would immediately have the effect of undermining that sanction; suspending such a sanction could only be justified in truly exceptional circumstances.

100. The Respondent's circumstances were not uncommon to others who had appeared before the Tribunal and were struck off. The Tribunal considered that to allow the Respondent to remain in practice whilst he considered his position with regards to an appeal would be damaging to the reputation of the profession. The maintenance of the public perception of integrity in the profession was paramount; to allow a solicitor to remain in practice in these circumstances would damage that perception.

101. The Respondent's wish to arrange the Firm's affairs was not found by the Tribunal to be an exceptional circumstance such as to suspend its sanction. The Respondent knew that he was facing serious allegations which, if proved, could result in his being struck off the Roll of Solicitors; he ought to have considered that eventuality and taken appropriate steps. The Tribunal was not prepared to suspend its order to allow the Respondent to make arrangements that he ought properly to have made prior to the hearing.

102. Accordingly, the Respondent's application for the order to be suspended was refused.

Costs

103. Mr Dutton applied for costs inclusive of VAT in the sum of £273,581.29. The investigation costs were £45,027.80, costs up to 26 July 2016 were £156,998.21, and costs since that date were £71,555.28. The costs of, and occasioned by the adjournment in July 2016 were £35,661.00. Mr Dutton submitted that the Applicant should recover all of its costs of the investigation and the proceedings, all the allegations having been found proved and dishonesty established. Mr Dutton referred to the Respondent's statement of means, and in particular the assertions therein that the Respondent had no interest in the matrimonial home. This was not accepted by the Applicant. The Respondent had explained in a statement in the bankruptcy proceedings, that he transferred his interest in the matrimonial home to his wife in 2012. Mr Dutton submitted that the Respondent remained married, and his wife was the Firm's practice manager; any transfer appeared to the Applicant not to be pursuant to the breakdown of the marriage, but a transfer possibly with a view to avoiding creditors. The application for costs was for an immediate order. The Respondent was facing bankruptcy proceedings; the SRA would seek to recover its costs as a judgment creditor. Whilst it was accepted that the costs in this matter were "substantial", this had been a substantial case to fight. The involvement of leading counsel was appropriate, particularly given the other substantial Axiom cases with which Mr Dutton was involved.

104. The Respondent submitted that given the level of costs, it was not a matter that could be dealt with by the Tribunal on that day. The Respondent applied for the costs to be made the subject of a detailed assessment. Further, the Tribunal and Mr Dutton had, it was submitted, no jurisdiction to enquire into the circumstances of his transfer of his matrimonial home some four years ago.

105. Mr Dutton submitted that if the Tribunal decided that there should be a detailed assessment of costs, the Applicant's application would be for an interim payment of £140,000, which was just over half the amount claimed. Mr Dutton submitted that the Applicant would be bound to recover that amount on any detailed assessment given that counsel and solicitors worked at particular rates for the SRA as a public regulator.

106. The Tribunal determined that given the level of costs, it was appropriate for the costs to be considered by a Costs Judge on a detailed assessment. The Tribunal ordered that the Respondent do pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed between the parties. The Tribunal further ordered that the Respondent do make an interim payment of £100,000 on account of costs pending detailed assessment to the SRA by no later than Friday 25 November 2016.

107. The Respondent's application, post the Tribunal's order, for costs not to be enforced without the Tribunal's permission, was not granted. The Tribunal had already determined that this was not a case where a summary assessment of costs was appropriate.

Statement of Full Order

108. The Tribunal Ordered that the Respondent, PAUL STOTT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay an interim payment of £100,000.00 on account of costs pending detailed assessment to the Solicitors Regulation Authority by no later than Friday 25 November 2016.

Dated this 28th day of November 2016
On behalf of the Tribunal

J. Martineau
Chairman